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# Federal Register

**6–21–00** **Wednesday**
**Vol. 65 No. 120** **June 21, 2000**
**Pages 38407–38712**

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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:** July 11, 2000, at 9:00 a.m.

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

**RESERVATIONS:** 202–523–4538

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 7323 of June 16, 2000**

## Father's Day, 2000

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

**A Proclamation**

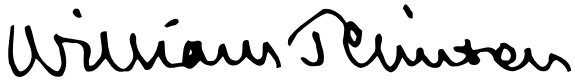
Each year, Americans set aside the third Sunday in June to pay special tribute to our fathers, who for many of us are the first and most important men in our lives. The role of father is a unique blessing and a profound responsibility, one at the very heart of our Nation's families and communities. When we are young, our father's nurturing brings us comfort and security. As we grow, our dads are our teachers and coaches—whether we are learning to read or to play a sport—and they instill in us cherished values of honor, courage, hard work, and respect for others. Later, as adults, we look to our fathers for advice and friendship. On all the paths of life, our fathers encourage us when we hesitate, support us when we falter, and cheer us when we succeed.

American fathers today must balance the demands of work and family. As our growing economy has helped America's families meet their financial needs, the pressure to maintain that balance has increased. For the health of our families, it is important that fathers have the time, the support, and the parenting skills necessary to fulfill their children's moral and emotional needs as well as provide for their physical well-being. Throughout our Administration, Vice President Gore and I have encouraged fathers to take an active and responsible role in their children's lives. This year, in recognition of Father's Day, I am directing the Department of Health and Human Services, along with certain other Federal agencies, to develop guidance for State and local governments, community providers, and families on Federal resources that are available to promote responsible fatherhood.

On this first Father's Day of the 21st century, let us honor our fathers, both living and deceased, for believing in our dreams and helping us to achieve them. Throughout the year, let us continue to reflect on the importance of fathers—whether biological, foster, adoptive, or stepfathers—as role models in our lives. And let us express our gratitude for the many gifts they bring to our lives by passing on their legacy of love and caring to our own children.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 18, 2000, as Father's Day. I invite the States, communities across our country, and all the citizens of the United States to observe this day with appropriate ceremonies and activities that demonstrate our deep appreciation and abiding love for our fathers.

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



[FR Doc. 00–15861
Filed 6–20–00; 8:45 am]
Billing code 3195–01–P

# Rules and Regulations

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

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 630

**RIN 3206–AI35**

### Family and Medical Leave

**AGENCY:** Office of Personnel Management.

**ACTION:** Correction to final rule.

**SUMMARY:** The Office of Personnel Management inadvertently deleted the last two sentences of § 630.1207, paragraph (j). This document corrects this error.

**EFFECTIVE DATE:** June 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824, or email to *payleave@opm.gov.*

**SUPPLEMENTARY INFORMATION:**

Accordingly, page 26487, first column, § 630.1207(j) of the final rule published on May 8, 2000, is corrected to read as follows:

**§ 630.1207 [Corrected]**

* * * * *

(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1202. For leave taken for all other serious health conditions and including leave taken on an intermittent or reduced leave schedule, if the health care provider has specified on the medical certification a minimum duration of the period of incapacity, the agency may not request recertification until that period has passed. An agency may require subsequent medical recertification more frequently than every 30 calendar days, or more frequently than the minimum duration of the period of incapacity specified on the medical certification, if the employee requests that the original leave period be extended, the circumstances described in the original medical certification have changed significantly, or the agency receives information that casts doubt upon the continuing validity of the medical certification.

* * * * *

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–15642 Filed 6–20–00; 8:45 am]

**BILLING CODE 6325–01–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 225

### Summer Food Service Program

*CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 210 to 299, revised as of January 1, 2000, make the following corrections to § 225.6:

1. On page 131, first column, add the following text to the end of paragraph (b)(1):

**PART 225—[CORRECTED]**

**§ 225.6 State agency responsibilities.**

* * * * *

(b) * * *

(1) * * * Sponsors applying for participation in the Program due to an unanticipated school closure during the period from October through April (or at any time of the year in an area with a continuous school calendar) shall be exempt from the application submission deadline.

* * * * *

2. On page 134, beginning in the second column, paragraphs (c)(4)(i), (ii) and (B) are corrected to read as follows:

**§ 225.6 State agency responsibilities.**

(c) * * *

(4) *Free meal policy statement.*

(i) Each applicant must submit a statement of nondiscrimination in its policy for serving meals to children. The statement must consist of an assurance that all children are served the same meals and that there is no discrimination in the course of the food service. A school sponsor must submit the policy statement only once, with the initial application to participate as a sponsor. However, if there is a substantive change in the school's free and reduced price policy, a revised policy statement must be provided at the State agency's request. In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants except camps must include a statement that the meals served are free at all sites.

(ii) In addition to the policy of service/nondiscrimination statement described in paragraph (c)(3) of this section, all applicants that are camps that charge separately for meals must include the following:

(A) * * *

(B) A description of the method or methods to be used in accepting applications from families for Program meals. Such methods must ensure that households are permitted to apply on behalf of children who are members of households receiving food stamp, FDPIR, or TANF benefits using the categorical eligibility procedures described in §225.15(f);

* * * * *

[FR Doc. 00–55510 Filed 6–20–00; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 784

**RIN 0560–AG17**

### Lamb Meat Adjustment Assistance Program

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule sets forth the regulations for the Lamb Meat Adjustment Assistance Program as authorized by clause (3) of section 32 of the Act of August 24, 1935, as amended. Producers of sheep and lambs may receive up to $30 million total, with a target of $10 million per year, in direct cash payments to help improve their production efficiencies and the marketability of lamb meat during the 3 year period from July 22, 1999, through

July 31, 2002. This action is designed to provide immediate financial assistance to sheep and lamb producers who have recently experienced low prices and poor market conditions.

**DATES:** Effective June 19, 2000. Comments on this rule must be received on or before July 21, 2000 in order to be assured of consideration. Comments on the information collections in this rule must be received by August 21, 2000, in order to be assured of consideration.

**ADDRESSES:** Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW., Washington, DC 20250–0512; telephone (202) 720–7901 or e-mail: danielle__cooke@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available on the PSD home page at http://www.fsa.usda.gov/dafp/psd/.

**FOR FURTHER INFORMATION CONTACT:** Danielle Cooke, (202) 720–1919.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 533 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

**Unfunded Mandates Reform Act of 1995**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act of 1995**

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request (ICR) to OMB for the approval of the Lamb Meat Adjustment Assistance Program report as necessary for the proper functioning of the program.

*Title:* Lamb Meat Adjustment Assistance Program.

*OMB Control Number:* 0560—New.

*Type of Request:* Request for a New Information Collection Package .

*Abstract:* Sheep and lamb operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. These operations must certify, as appropriate, with respect to: (1) The number of eligible rams purchased; (2) the number of sheep enrolled in an eligible sheep improvement program; (3) sheep and lamb facility improvements; (4) the number and condition of eligible slaughter and feeder lambs marketed; and (5) that the operation is still in the business of agricultural production. The information collection will be used by FSA to determine the program eligibility of the sheep and lamb operation in accordance with this subpart. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. Additionally, without accurate information on sheep and lamb operations, the national payment rate would be inaccurate resulting in payments being made to ineligible recipients, and compromising the integrity and accuracy of the program.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 5 minutes per response.

*Respondents:* Sheep and Lamb Operations.

*Estimated Number of Respondents:* 60,000.

*Estimated Number of Responses per Respondent:* 5

*Estimated Total Annual Burden on Respondents:* 24,000 hours.

*Proposed topics for comment include:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the 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 should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512 or telephone (202) 720–7901.

**Executive Order 12612**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

**Immediate Effectiveness of This Rule**

It has been determined that this rule should be issued as an interim rule, effective immediately, but subject to modification on the consideration of comments that are timely received. Delaying the implementation of the rule pending comment would be impracticable and contrary to the public interest, based on consideration of the provisions of Section 32 of the Act of August 24, 1935, as amended, the current market situation for lamb meat, and the lack of material adverse effect on other parties.

On July 7, 1999, the President issued a declaration concerning lamb meat that directed the Secretary of Agriculture to implement adjustment assistance programs based on authorized programs to facilitate efforts of the domestic lamb industry to make a positive adjustment to import competition. Market conditions have deteriorated since July 1997. Lamb producers have been some of the hardest hit, suffering major losses during 1997 and 1998 due to record high imports of low-priced lamb meat, so there is a critical need for action. Furthermore, while the need for immediate assistance is critical, potential harm to other parties, resulting from the issuance of this rule as an interim rule is expected to be minimal.

**The Small Business Regulatory Enforcement Fairness Act**

The finding made above, that this rule should be made effective immediately, applies for all purposes including, but not limited, to the provisions of section 808 of the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 808), which provides that a rule may, without regard to certain special Congressional oversight measures provided for in SBREFA, take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public interest. For the reasons set out, it has been determined that delay would be contrary to public interest and that the rule should be made effective immediately.

**Background**

Clause (3) of section 32 of the Act of August 24, 1935, as amended, authorizes the Secretary of Agriculture to ''reestablish farmers' purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption.''

During the past few years a number of factors have produced a serious economic crisis that threatens the existence of sheep and lamb producers throughout the United States. There are an estimated 66,800 sheep and lamb operations in the United States that account for about 1 percent of the value of all U.S. farm production. Sheep and lamb prices, marketings, and production have declined steadily since July 1997. Lamb producers were one of the hardest hit segments of the sheep industry, suffering major losses during 1997 and 1998, when lamb meat imports reached record highs. Threatened by a surge of low-priced, imported lamb meat, many producers have lost the ability to remain competitive in the domestic marketplace.

This rule addresses that situation by providing for a new program to be administered by FSA utilizing the foregoing authority. Payments to sheep and lamb operations under the program provided for by this rule will offset a portion of the per-head losses producers have incurred marketing their lambs and will help the U.S. lamb industry achieve sustained competitiveness, while respecting international trade obligations. The program will be administered in two parts, one part covering activities occurring in what is referred to in the rule as ''Year 1'' ( the period running from July 22, 1999, and ending September 30, 2000) and the second part covering activities occurring in what are called ''Year 2'' and ''Year 3'' in the rules—those being respectively, the periods from August 1, 2000 through July 31, 2001, and August 1, 2001, through July 31, 2002. The rule contemplates that $30 million will be available for the program and limits expenditures to that amount with a provision for pro-rating payments in any program year in which the funds will be exhausted.

Payments under this new program will provide those eligible for the payments with an immediate infusion of funds to help pay operating expenses and meet other financial obligations. ''Year 1'' payments will be available to sheep and lamb operations that: (1) Between July 22, 1999, through September 30, 2000, purchased 90 day-old or older rams intended for breeding purposes which the operation held for at least 90 days continuously thereafter and continue to hold or use for breeding purposes, when the payments are to be made; (2) made lamb or feedlot facility improvements during the same period; or (3) in that period, enrolled sheep in an eligible sheep improvement program. The improvement program can be the National Sheep Improvement Program operated by the American Sheep Industry Association, or a similar program, if approved by FSA, to assist sheep and lamb producers by genetically evaluating animals in a flock for maternal, growth, and wool traits or to otherwise provide equivalent benefits to the producer's herd.

''Year 1'' facility improvement payments will be made to sheep and lamb facilities only with respect to improvements that will be maintained and used in the sheep and lamb operation for at least the next 3 consecutive years from the date of the completion of the improvements. Eligible facility improvements may include, but are not limited to new and improved feedlots, lambing sheds, and shearing sheds. Eligible sheep and lamb operations in ''Year 1'' can receive up to $100 per eligible ram purchased, not to exceed $2,500 per operation; $.50 per head of eligible sheep enrolled in a sheep improvement program, not to exceed $500 per operation; and 20 percent of the sheep and lamb operation's eligible facility improvement costs, not to exceed $2,500 per operation. Accordingly, maximum payments to any operation during ''Year 1'' will be limited to $5,500 for the three parts of the ''Year 1'' program. The rule also makes provision for limiting payments for rams to the extent that such purchases would produce a ratio of rams to ewes of less than 1 to 15. In addition, eligible lamb producers must have in 1999 gross annual revenue of $2.5 million or less. The purpose of this and other limitations on payments is to help target limited financial resources to individual producers who are relatively less able to finance lamb improvements.

For ''Year 2'' and ''Year 3'', payments will be made, subject to the availability of funds, with respect to marketings of (1) slaughter lambs and (2) feeder lambs. ''Year 2'' payments will be made for such marketings during ''Year 2'' and ''Year 3'' payments will be made for corresponding marketings in that year. ''Year 2'' and ''Year 3'' have been separated so that separate sign-ups can be held, separate payments can be made, and to ease proration problems in the event that the claims under the program should eventually exceed the amount of the available funds.

First, as to ''Year 2'' and ''Year 3'' marketings of slaughter lambs, the lambs must have been owned by the lamb-raising operation in the normal course of business for 30 days prior to the qualifying marketing and must produce a carcass which: (1) Grades ''USDA Yield Grade 2''; (2) has ''USDA Choice or Prime'' quality; (3) has a muscling confirmation score of ''Average Choice'' or better; and (4) has a 55 to 75 pound dressed hot carcass weight.

With respect to the other category of marketings for which ''Year 2'' and ''Year 3'' payments can be made, ''feeder lambs'' are defined in this rule to be either ewes or wethers of less than 1 year of age that when sold are intended to be further fed a grain concentrate diet to reach an acceptable slaughter market weight. Payments for feeder lamb marketings will be made only if the lambs are, at the time of marketing, thick-muscled and large-framed lambs, as described in USDA Standards and were owned by the

operation for 30 days, continuously immediately prior to the qualifying marketing. In addition, lamb producers eligible for payments must have in 1999 and subsequent years, an applicable gross annual revenue of $2.5 million or less.

Subject to the availability of funds, the per-head ''Year 2'' and ''Year 3'' payment rate is set by the rule to be $5 for each eligible slaughter lamb marketing and $3 for each eligible feeder lamb marketing. An additional $3 per slaughter lamb payment will be made for slaughter lambs marketed from June 1 through July 31 of the program year. For slaughter lambs, an Agricultural Marketing Service (AMS) agent or an assigned representative of AMS must verify that lamb carcasses meet the payment criteria. The condition of qualifying feeder lambs must also be certified to by the AMS agent or an assigned AMS representative.

Payments for parts of this program (Years 1–3) are available to all eligible U.S. operations without herd or per operation or per person payment limitations, except as noted.

Eligible sheep and lamb operations making application for payments under this part must self-certify, as applicable: (1) The number of eligible rams purchased, as well as, information establishing the ratio of rams to ewes on the operation for all relevant times during the program year to which such information applies; (2) the number of sheep enrolled in a sheep improvement program; (3) the lamb or feedlot facility improvements during ''Year 1''; (4) the intent to use the improvement for sheep production activities for the next 3 consecutive years; (5) the number of slaughter lamb and feeder lamb marketings that meet the specified criteria; and (6) the operation must also certify that it is still engaged in the business of producing and marketing agricultural products at the time of application for payment. Eligible operations must apply for payments during the sign-up period set by the FSA pursuant to these regulations.

Sheep and lamb operations may, during the applicable period, apply in person at county FSA offices during regular business hours. Alternatively, program applications may be obtained by mail, telephone, and facsimile from their designated county FSA office or obtained via the Internet. The Internet website is located at www.fsa.usda.gov/dafp/psd/.

**List of Subjects in 7 CFR Part 784**

Price support programs, Reporting and recordkeeping requirements, Sheep.

Accordingly, Title 7 of the Code of Federal Regulations is amended to add a new part, 7 CFR part 784, to read as follows:

## PART 784—LAMB MEAT ADJUSTMENT ASSISTANCE PROGRAM

Sec.

784.1 Applicability; available payments.
784.2 Administration.
784.3 Definitions.
784.4 Year 1 time and method for application.
784.5 Year 1 eligibility.
784.6 Year 1 rate of payment and limitations on funding.
784.7 Year 2 and Year 3 time and method for application.
784.8 Year 2 and Year 3 eligibility.
784.9 Year 2 and Year 3 rate of payment.
784.10 Availability of funds for Year 1 through Year 3.
784.11 Appeals.
784.12 Misrepresentation and scheme or device.
784.13 Estates, trusts, and minors.
784.14 Death, incompetency, or disappearance.
784.15 Maintaining records.
784.16 Refunds; joint and several liability.

**Authority:** Clause (3) of section 32 of the Act of August 24, 1935, as amended; 7 U.S.C. 612c.

### § 784.1 Applicability; available payments.

(a) This part establishes the Lamb Meat Adjustment Assistance Program. The purpose of this program is to provide benefits to sheep and lamb operations pursuant to clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) in order to reestablish their purchasing power in connection with the normal production of sheep and lambs for domestic consumption and boost the long-term development and growth of sheep and lamb farming in the United States.

(b) Under and subject to this part, FSA will provide with respect to sheep and lamb operations: ''Year 1'' payments in which sheep and lamb operations will receive payments for, during the time period encompassing ''Year 1'' as defined in these regulations, purchasing eligible rams for breeding, enrolling their herd in a sheep improvement program, and for making improvements to their production facilities; and ''Year 2'' and ''Year 3'' payments for marketings of eligible slaughter lambs or feeder lambs during the period encompassing those time periods. Unless otherwise determined by the agency in accordance with the provisions of this part, the amount that may be expended under this part shall not exceed $30 million. Claims that exceed that amount will be prorated in accordance with the provisions for proration that are contained in this part.

### § 784.2 Administration.

(a) This part shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Deputy Administrator for Farm Programs, FSA. The program shall be carried out in the field by FSA State and county committees (State and county committees).

(b) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this part.

(c) The State committee shall take any action required by this part which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No delegation herein to a State or county committee shall preclude the Deputy Administrator for Farm Programs, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

### § 784.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Lamb Meat Adjustment Assistance Program established by this part.

*Agricultural Marketing Service or AMS* means the Agricultural Marketing Service of the Department.

*Application* means the Lamb Meat Adjustment Assistance Program Application, Forms FSA–382 and FSA–383.

*Department* means the United States Department of Agriculture.

*Eligible lambs* means feeder lambs and slaughter lambs.

*Farm Service Agency or FSA* means the Farm Service Agency of the Department.

*Feeder lamb* means a ewe or wether of less than 1 year of age that when sold

is intended to be further fed a grain concentrate diet to reach an acceptable slaughter market weight.

*Muscling confirmation score of ''Average Choice''* means a muscling confirmation score of that designation assigned in accordance with official USDA standards and procedures.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

*Secretary* means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

*Sheep and lamb operation* means any self-contained, separate enterprise operated as an independent unit exclusively within the United States in which a person or group of persons raise sheep and/or lambs.

*Sheep improvement program* means the ''National Sheep Improvement Program'' operated by the American Sheep Industry Association or other similar program for herd improvement approved by the FSA with respect to payments under this part.

*Slaughter lamb* means a lamb that is sold for immediate slaughter.

*United States* means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

*USDA Choice, USDA Prime, USDA Yield Grade 2* means, respectively, the classifications so designated under the Official United States Standards for Grades of Lamb, Yearling, Mutton, and Mutton Carcasses promulgated by the Secretary of Agriculture under the Agricultural Marketing Act of 1946, as amended (60 Stat. 1087; 7 U.S.C. 1621–1627) and related authorities.

*Year 1* means the period of time beginning July 22, 1999, and ending September 30, 2000.

*Year 2* means the period of time beginning August 1, 2000, and ending July 31, 2001.

*Year 3* means the period of time beginning August 1, 2001, and ending July 31, 2002.

### § 784.4 Year 1 time and method for application.

(a) Sheep and lamb producers may obtain a ''Year 1'' application, Form FSA–382 (Lamb Meat Adjustment Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Form FSA–382 at http://www.usda.gov/dafp/psd/.

(b) A request for ''Year 1'' benefits under this part must be submitted on a completed Form FSA–382. The Form FSA–382 should be submitted to the FSA county office serving the county where the sheep and lamb operation is located but, in any case, must be received by the FSA county office by the close of business on October 13, 2000. Applications not received by the close of business on October 13, 2000, will be returned as not having been timely filed and the sheep and lamb operation filing the application will not be eligible for benefits under this program.

(c) The sheep and lamb operation requesting ''Year 1'' benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification may be subject to additional civil and criminal sanctions.

(d) Not withstanding any other provisions of this section, payments will not be made under this section for the acquisition of rams to the extent that any such purchase, at any time during ''Year 1'', created, or help create, a ratio of rams to ewes for the operation that was less than 1 ram to 15 ewes. However, the limitation on payments provided for in the preceding sentence shall not apply to the extent that the operation establishes to the satisfaction of the COC that a lower ratio of rams to ewes is customary for the operation.

### § 784.5 Year 1 eligibility.

(a) To be eligible to receive the ''Year 1'' payments under this part, as described in § 784.1, at the rates provided in § 784.6, a sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application, must have in 1999 gross annual revenue of $2.5 million or less, and must have done at least one of the following during ''Year 1'':

(1) Purchased rams for breeding purposes within that operation, provided that such rams must have been at least 90 days of age when purchased and must have been, or will be, maintained by the operation for at least 90 days continuously after the date of purchase;

(2) Enrolled sheep in an eligible sheep improvement program; or

(3) Made sheep and lamb operation facility improvements with respect to their operation.

(b) With respect to paragraph (a)(3) of this section, in order to receive payments, the sheep and lamb operation must submit supporting documentation of the cost of the improvements made to the facility during program ''Year 1'' and must use facility improvements for sheep and lamb production activities continuously for at least the next 3 consecutive years. Upon a failure to maintain the facility for the full three years, the operation must refund the ''Year 1'' facility payment immediately and with interest.

(c) With respect to payments made for activities addressed in paragraph (a)(1) of this section, upon any failure to maintain a ram after payment for the full required 90-day period, unless that period has already expired, the operation must immediately refund the payment made and with interest.

### § 784.6 Year 1 rate of payment and limitations on funding.

Subject to the availability of funds and to the proration rules of § 784.10, ''Year 1'' payments for qualifying operations shall be at the following rates:

(a) Up to $100 for each eligible ram purchased, up to $2,500 per sheep and lamb operation;

(b) $.50 for each qualifying sheep enrolled in a qualifying sheep improvement program, up to $500 per sheep and lamb operation; plus

(c) 20% of the cost of the qualifying facility improvements up to $2,500 per sheep and lamb operation.

### § 784.7 Year 2 and Year 3 time and method for application.

(a) To receive ''Year 2'' and ''Year 3'' benefits, as described in § 784.1, at rates set out in § 784.9, sheep and lamb operations may obtain an application, Form FSA–383 (Lamb Meat Adjustment Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the Form FSA–383 at *http://www.fsa.usda.gov/dafp/psd/.*

(b) Sheep and lamb operations must have the certification section of the application Form FSA–383 completed prior to submission of the form to the county office.

(c) A request for ''Year 2'' and ''Year 3'' benefits under this part must be

submitted on a completed Form FSA–383. The Form FSA–383 should be submitted to the FSA county office serving the county where the sheep and lamb operation is located but, in any case, must be received by the FSA county office by the close of business on August 15, 2001, if applying for ''Year 2'' benefits, and by the close of business on August 15, 2002, if applying for ''Year 3'' benefits. Applications not received by the respective deadlines will be returned as not having been timely filed and the sheep and lamb operation will not be eligible for the benefits which were the subject of the failed application.

(d) The sheep and lamb operation requesting benefits under this part must certify to the accuracy of the information provided in their application for benefits. All information provided is subject to verification and spot checks by FSA. Refusal to allow FSA or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

**§ 784.8 Year 2 and Year 3 eligibility.**

(a) Subject to the availability of funds, ''Year 2'' and ''Year 3'' payments will, as described to in § 784.1, be made for eligible marketings of slaughter lambs for slaughter. (Criteria for feeder lamb payments appear elsewhere in this section). Such payments for slaughter lambs, as opposed to feeder lambs, can be received by an operation, at the rates described in § 784.9, for those eligible lambs slaughtered in the respective time periods comprising ''Year 2'' and ''Year 3'' if the lambs were owned, by the operation, in the normal course of raising lambs for slaughter, continuously for 30 days prior to the marketing for slaughter and if the carcasses produced by the slaughter of the lamb meets the criteria set out in paragraph (b) of this section. Other criteria, as set out in this part, may also apply as a condition for, or limitation on, payment.

(b) In order for a marketing of a slaughter lamb to qualify for payment under paragraph (a) of this section, the carcass produced by the slaughter must be evaluated and certified by an AMS agent or their assigned representative that such carcass meets the following criteria:

(1) Meet the requirements of USDA Quality Grade Choice or Prime;

(2) Meet the requirements of USDA Yield Grade 2;

(3) Have a muscling confirmation score of ''Average Choice'' or better; and

(4) Have a 55–75 pound dressed hot carcass weight;

(c) Subject to the availability of funds, in order to be eligible for the ''Year 2'' and ''Year 3'' feeder lamb payments referred to in § 784.1, at the rates specified in § 784.9, sheep operations must have in the preceding year of which payment is sought had a gross annual revenue of $2.5 million or less, and must for the year in which the payment is sought marketed qualifying feeder lambs. In order for a feeder lamb to be a qualifying feeder lamb it must have been:

(1) Owned by the operation, as part of its normal raising of lambs for slaughter, continuously for 30 days prior to the time of the qualifying marketing; and

(2) At the time of the marketing must have been, as determined and certified by AMS, thick-muscled and large-framed.

(d) To be eligible for any payments under this section, the sheep and lamb operation must be engaged in the business of producing and marketing agricultural products at the time of filing the application.

(e) In addition, to be eligible for ''Year 2'' and ''Year 3'' payments, a sheep and lamb operation must submit a timely application during the application period for ''Year 2'' and ''Year 3'' benefits and comply with all other terms and conditions of this part or are contained in the application to be eligible for such benefits.

**§ 784.9 Year 2 and Year 3 rate of payment.**

Subject to the availability of funds, and the proration rules set out in § 784.10, ''Year 2'' and ''Year 3'' payments may be made to sheep and lamb operations at the following rates:

(a) $3 for each qualifying feeder lamb; plus

(b) $5 for each eligible qualifying slaughter lamb, except those slaughter lambs marketed during the period of June 1 through July 31 of the applicable program year for which the payment rate will be $8 per head.

**§ 784.10 Availability of funds for Year 1 through Year 3.**

Total payments under this part, unless otherwise determined by the FSA, cannot exceed $30 million. In the event that funds should be insufficient to complete payments for a program year then the claims for that program year shall be prorated by a national factor so as to reduce the payments to be made to the amount available. Payments for preceding years will not be affected.

**§ 784.11 Appeals.**

Any sheep and lamb operation which is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination in accordance with the appeal regulations set forth at parts 11 and 780 of this title.

**§ 784.12 Misrepresentation and scheme or device.**

(a) A sheep and lamb operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to any person or operation engaged in a misrepresentation, scheme, or device, shall be refunded with interest together with such other sums as may become due. Any sheep and lamb operation or person engaged in acts prohibited by this section and any sheep and lamb operation or person receiving payment under this part shall be jointly and severally liable with other persons or operations involved in such claim for benefits for any refund due under this section and for related charges. The remedies provided in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

**§ 784.13 Estates, trusts, and minors.**

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(b) A minor who is otherwise eligible for assistance under this part must, also:

(1) Establish that the right of majority has been conferred on the minor by court proceedings or by statute;

(2) Show a guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) Furnish a bond under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

**§ 784.14 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in part 707 of this chapter may receive such benefits, as determined appropriate by FSA.

**§ 784.15 Maintaining records.**

Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein. Such records and accounts must be retained for 3 years after the date of payment to the sheep and lamb operations under this program. Destruction of the records after such date shall be the risk of the party undertaking the destruction.

**§ 784.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this part, and if any refund of a payment to FSA shall otherwise become due in connection with the application, or this part, all payments made under this part to any sheep and lamb operation shall be refunded to FSA together with interest as determined in accordance with paragraph (c) of this section and late payment charges as provided in part 1403 of this title.

(b) All persons signing a sheep and lamb operation's application for payment as having an interest in the operation shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this part with respect to such operation.

(c) Interest shall be applicable to refunds required of any person under this part if FSA determines that payments or other assistance was provided to a person who was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, from the date FSA made such benefits available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. FSA may waive the accrual of interest if FSA determines that the cause of the erroneous determination was not due to any action of the person.

(d) Interest determined in accordance with paragraph (c) of this section may be waived at the discretion of FSA alone for refunds resulting from those violations determined by FSA to have been beyond the control of the person committing the violation.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 792.

(f) Any excess payments made by FSA with respect to any application under this part must be refunded.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed at Washington, DC, on June 16, 2000.

**George Arredondo,**

*Acting Administrator, Farm Service Agency.*

[FR Doc. 00–15724 Filed 6–19–00; 11:19 am]

BILLING CODE 3410–05–P

## FEDERAL ELECTION COMMISSION

## 11 CFR Parts 100, 101, 102, 104, 109, 114, 9003, and 9033

**[Notice 2000–13]**

## Electronic Filing of Reports by Political Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Final Rules and Transmittal of Regulations to Congress.

**SUMMARY:** The Federal Election Commission is revising its regulations to implement a mandatory electronic filing system for reports of campaign finance activity filed with the agency. Beginning with reporting periods that start on or after January 1, 2001, all political committees (except the authorized committees of candidates for U.S. Senate) and other persons will be required to file electronically when either their total contributions or total expenditures within a calendar year exceed, or are expected to exceed, $50,000. The Commission has had a voluntary electronic filing system in place since 1996. Voluntary electronic filing will still be an option for political committees and persons who do not exceed the $50,000 threshold. This mandatory system is designed to reflect recent changes to the Federal Election Campaign Act of 1971. Further information is provided in the supplementary information that follows.

**DATES:** Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary Smith, Assistant General Counsel, or Cheryl Fowle, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of new regulations to be added to 11 CFR 100.19 and 11 CFR 104.18 and revisions to the regulations at 11 CFR 101.1, 102.2, 104.5, 109.2, 114.10, 9003.1 and 9033.1 making electronic filing mandatory for certain political committees and other persons. These rules implement provisions of Public Law 106–58, (Pub. L. No. 106–58, 106th Cong., § 639, 113 Stat. 430, 476–477 (1999)) which amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.* (''FECA'' or ''the Act''), to require, *inter alia,* that the Commission make electronic filing mandatory for political committees and other persons required to file with the Commission who, in a calendar year, have, or have reason to expect to have, total contributions or total expenditures exceeding a threshold amount to be set by the Commission. The final rules announced today set the threshold at $50,000 per calendar year.

The 1999 amendment to the FECA and the regulations (11 CFR 104.18) maintain the voluntary electronic filing system for political committees or persons who do not exceed, or who do not have reason to expect to exceed, the $50,000 threshold of financial activity. The Commission encourages committees below these thresholds to voluntarily file their reports electronically.

Public Law 106–58 requires the mandatory system to be in place for reports covering periods after December 31, 2000.

Section 438(d) of Title 2, United States Code and sections 9009(c) and 9039(c) of Title 26, United States Code require that any rules or regulations prescribed by the Commission to carry out the provisions of Titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 16, 2000.

### Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** on April 11, 2000, 65

FR 19339 (April 11, 2000). The NPRM contained proposed rules covering, *inter alia,* the threshold amount, what reports are covered and the requirement for publicly funded candidates to agree to file electronically.

The comment period ended on May 11, 2000. The Commission received three comments, one from U. S. Public Interest Research Group, and one from National Association of Business Political Action Committees. In addition, the Internal Revenue Service (''IRS'') submitted a comment in which it said that the proposed rules are not inconsistent with IRS regulations or the Internal Revenue Code.

The goals of the electronic filing system include more complete and rapid on-line access to reports on file with the Commission, reduced paper filing and manual processing, and more efficient and cost-effective methods of operation for filers and for the Commission. The 1999 amendment to the FECA requires that the Commission make electronically filed reports, designations or statements available on its web site not later than 24 hours after the Commission receives them. Pub. L. No. 106–58, 106th Cong., § 639(a), 113 Stat. 430, 476 (1999). Currently, reports that are filed under the voluntary system of electronic filing are posted in viewable form on the Commission's web site within five minutes and detailed data are available in the Commission's databases within 24 to 48 hours (depending on the time of receipt). In contrast, under the current paper filing system, the time between receipt of a report and its appearance in viewable form on the Commission's web site is 48 hours. Additionally, while some summary data is available in the Commission's indexes within 48 hours, it can take as long as 30 days before the detailed data filed on paper is available in those databases. Thus, the greater the number of pages that are filed electronically, the greater the volume of data that is almost instantly available. Additionally, decreasing the volume of paper filed will decrease the processing time of the reports that are filed on paper, making them more rapidly available in the Commission's databases.

*Section 100.19 File, filed or filing (2 U.S.C. 434(a)).*

The Commission's regulations at 11 CFR 100.19 define *file, filed,* or *filing* with respect to reports filed on paper. New paragraph (c) is being added to section 100.19 to define these terms with respect to electronically filed reports. In order to be timely filed, the report must be received and validated by the Commission's computer system on or before 11:59 p.m. Eastern Standard Time (or Eastern Daylight Time, as appropriate) on the prescribed filing date. The computer validation program ensures that all required information is disclosed. Additionally the validation program is being updated to require that the figures disclosed within the report add up to the figures reported on the Detailed Summary Page and that committees correctly indicate the type of report being filed. Incomplete or incorrect reports that do not pass validation will not be accepted and will not be considered filed. Please note, however, that using the Commission's FECFile software will ensure that all numbers in the report add up to the correct total. The Commission received one comment on this issue in response to its NPRM on its new administrative fine program. (*See* 65 FR 16534, March 29, 2000.) The commenter, Akin, Gump, Strauss, Hauer & Feld, L.L.P., argued that the Commission's rules should clarify the date and time when an electronic report is considered ''filed.'' Thus, paragraph (c) is being added to this section.

*Section 101.1 Candidate designations (2 U.S.C. 432(e)(1)).*

The Commission is revising paragraph (a) of section 101.1 to clarify that if a candidate exceeds, or has reason to expect to exceed the $50,000 threshold, he or she must file his or her Statement of Candidacy electronically on FEC Form 2. The Commission anticipates that its free FECFile software will generate FEC Form 2 by January 1, 2001, when these regulations take effect. The Commission received no comments on this provision.

*Section 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b)(c)).*

Commission regulations at 11 CFR 102.2(a)(1)(i) through (vi) require a political committee to provide certain identifying information on its Statement of Organization (FEC Form 1). New paragraph (a)(1)(vii) requires any political committee that has an Internet web site to provide the address of its web site as part of its address on FEC Form 1. Additionally, it requires any committee that is required to file electronically, and that has an electronic mail address, to include its electronic mail address as part of its address on FEC Form 1. The Commission received no comments on these changes.

Revisions to paragraph (a)(2) clarify that if a committee is required to file electronically, it must file amendments to its Statement of Organization (FEC Form 1) electronically. The Commission anticipates that its free FECFile software will generate FEC Form 1 by January 1, 2001, when these regulations take effect. The Commission received one comment on the issue of filing amendments by electronic letter. For the reasons explained at ''F. Amending Reports,'' infra, the Commission is not allowing filers to amend electronic reports by electronic letter, rather than using the appropriate electronic FEC form.

*Section 104.5 Filing dates (2 U.S.C. 434(a)(2)).*

The Commission's regulations at 11 CFR 104.5(e) define when a paper report is considered filed with respect to when and how it is mailed. A new sentence is being added to paragraph (e) to provide that, in order to be timely filed electronically, the report, designation or statement must be received and validated by the Commission's computer system on or before 11:59 p.m. Eastern Standard Time (or Eastern Daylight Time, as appropriate) on the prescribed filing date. Incomplete or incorrect reports that do not pass validation will not be accepted and will not be considered filed. The Commission is adding the new sentence to paragraph (e) of this section to follow the changes in 11 CFR 101.1.

*Section 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).*

Section 104.18 is being reorganized. New paragraph (a) sets forth the thresholds and rules for mandatory electronic filing. Former paragraph (a) ''General'' is redesignated as paragraph (b) ''Voluntary'' and sets forth the rules with regard to who may voluntarily file electronically. New paragraph (c) has been added to define which reports under the 1999 amendment to the FECA must be filed electronically. Former paragraphs (b) through (g) are being redesignated as paragraphs (d) through (i). These provisions apply to both mandatory and voluntary electronic filing. Paragraph (d) continues to state the format requirements for the electronic filing system (both mandatory and voluntary). Paragraph (e) sets forth the rules on the acceptance and validation of electronically filed reports. Paragraph (f) addresses amending electronic reports. Paragraph (g) sets forth signature requirements. Rules for schedules and forms requiring third party signatures are in paragraph (h), and paragraph (i) addresses the preservation of reports.

**A. Who Must File Electronically**

The mandatory electronic filing provisions of Public Law 106–58 and new paragraph (a) of 11 CFR 104.18 apply to those political committees and other persons who are required to file reports, statements and designations with the FEC. This includes House and Presidential candidates and their authorized committees, party committees, nonconnected committees, and separate segregated funds required to file with the Commission. Mandatory electronic filing does not apply to candidates for United States Senate and their authorized committees because Senate candidates and their committees must file with the Secretary of the Senate. Senate candidates are, however, encouraged to electronically file an unofficial copy of their reports, designations and statements with the FEC for the purposes of faster disclosure.

The Commission received one comment requesting clarification that the threshold applies to each individual committee and not to the total activity of all affiliated committees. While affiliated unauthorized committees share contribution limits, they do not file consolidated reports. Thus, the Commission has concluded that it would be overly burdensome to require all affiliated unauthorized committees to file electronically if, in the aggregate they exceed, or have reason to expect to exceed, the threshold. Therefore, the threshold applies to each individual unauthorized committee whether or not it is affiliated with other committees.

In contrast, authorized committees of a candidate are affiliated and share contribution limits, but the principal campaign committee files one consolidated report incorporating all reports from all other authorized committees (except joint fundraising committees, see *infra*) for that candidate for that election. The principal campaign committee also forwards to the Commission, along with its own, the reports of the other authorized committees. Therefore, all authorized committees of a candidate must file electronically if the total of all contributions and expenditures from all authorized committees for that election exceeds, or the committees have reason to expect the totals to exceed, the threshold.

Joint fundraising representatives (*see* 11 CFR 102.17) must file electronically if they have, or have reason to expect to have, total contributions or total expenditures exceeding the $50,000 threshold. Thus, if for example, a joint fundraiser raises total contributions of $65,000 that it divides equally between the three participating committees, including itself, the joint fundraising representative must file electronically.

Other persons, including individuals and qualified nonprofit corporations, must file electronically if they make independent expenditures exceeding $50,000 in a calendar year.[1] Please note, however, that the provision in the NPRM that would have applied the new electronic filing rules to corporations or labor organizations making communications in excess of $50,000 to their restricted classes has been deleted from the final rules because these disbursements are not expenditures. 2 U.S.C. 431(9)(B)(iii) and (v) and 441b(b)(2) and 11 CFR 100.8(b)(4). The Commission received no comments on this issue.

**B. Threshold**

The Commission has set $50,000 as the appropriate threshold for all political committees and other persons because, as discussed below, data from the 1996 and 1998 election cycles indicate that at that threshold, the goals of the statutory amendment are maximized and the effect on the political committees and other persons is minimized.

*1. Nonfederal Funds; Cash on Hand; Debts*

The Commission received one comment requesting clarification that, since the purpose of the FECA is the disclosure of federal activity, the new rule applies only when a committee makes $50,000 in expenditures or receives $50,000 in contributions as defined in 2 U.S.C. 431(8) and (9) and 11 CFR 100.7 and 100.8. The commenter is correct that for purposes of determining if a filer has exceeded, or has reason to expect to exceed, the $50,000 filing threshold, nonfederal funds should be excluded from the calculation.

In addition, please note that cash on hand and debt that is outstanding at the beginning of the calendar year are not included in the threshold calculation. Thus, the calculation of the threshold takes into account only those contributions received or expenditures made, or expected to be received or made, within the calendar year.

To calculate whether the committee has exceeded the threshold, use the following formulas:[2]

Unauthorized committees other than political party committees (FEC Form 3X).

*Contributions:* Total contributions (from individuals and other persons, political party committees and other political committees) minus refunds of contributions (to individuals and other persons, political party committees and other political committees) plus transfers from affiliated federal committees.

*Expenditures:* Total federal operating expenditures plus transfers to affiliated federal committees plus contributions to federal candidates/committees and other political committees plus independent expenditures.

Political Party Committees (FEC Form 3X).

*Contributions:* Total contributions (from individuals and other persons, political party committees and other political committees) minus refunds of contributions (to individuals and other persons, political party committees and other political committees) plus transfers from affiliated federal political party committees.

*Expenditures:* Total federal operating expenditures plus transfers to affiliated federal political party committees plus contributions to federal candidates/committees and other political committees plus independent expenditures plus coordinated expenditures.

Authorized committees (FEC Form 3, or FEC Form 3P (Presidential candidates only)).

*Contributions:* Total contributions (from individuals and other persons, political party committees, other political committees and the candidate, including the outstanding balance of any loans made, guaranteed or endorsed by the candidate or other person) minus any refunds of contributions (to individuals and other persons, political party committees or other political committees).

*Expenditures:* Total operating expenditures plus total contributions to other federal candidates, political party committees or other federal political party committees.

*2. Candidates and Authorized Committees*

Data from the 1996 and 1998 election cycles show that this threshold would

[1] Note that under 11 CFR 104.4(c) and 105.4, independent expenditures in favor of, or opposition to, candidates for the U.S. Senate must be filed with the Secretary of the Senate and, therefore are not subject to this regulation.

[2] These calculations can be estimated by using the Detailed Summary Page of the appropriate FEC Form for filing receipts and disbursements.

make 96% to 98% [3] of all financial activity reported by House and Presidential campaign committees almost immediately available on both the FEC's web site and in the agency's on-line databases. The historical information shows that of the 1,837 to 2,231 authorized committees filing with the Commission between 1995 and 1998, 31% to 44% of the committees (599 to 982 committees) had aggregate contributions or expenditures exceeding $50,000. These authorized committees filed 43% to 73% of the reports (2,162 to 12,646 reports), and 73% to 88% (66,569 to 282,339 pages) of the total number of pages filed by authorized committees. If 73% to 88% of the total number of pages filed by authorized committees is filed electronically, the Commission can manually process the remaining 12% to 29% of the pages more quickly to substantially reduce the amount of time before the information is available in Commission databases.

The effect of a $50,000 threshold on candidates and authorized committees will be minimal since, based on the 1996 and 1998 election cycle data, only the largest 30% to 40% of registered authorized committees would be required to file electronically.

*3. Party Committees*

At the $50,000 level, historical data from the 1996 and 1998 election cycles show that of the 373 to 451 party committees filing with the Commission, 36% to 41% of them (142 to 182 committees) consistently disclosed over 99% (between $213 million and $459 million) of party activity. Of the total number of pages filed by party committees, 93% to 96% (71,598 to 210,242 pages) would have been filed electronically, thereby greatly decreasing the amount of paper processing by the committees and the FEC and considerably increasing the amount of data that would be almost immediately available.

Based on the 1996 and 1998 election cycle data, the impact on party committees will be relatively small since only 36% to 41% of all party committees registered with the Commission during those election cycles would have been required to file electronically. Thus, the smallest 59% to 64% of party committees could continue to file paper reports.

*4. Nonconnected Committees*

At the $50,000 level, in the 1996 and 1998 election cycles, of the 840 to 933 nonconnected committees filing with the Commission, 15% to 22% of them (128 to 202 committees) disclosed 88% to 93% of the activity by nonconnected committees (representing approximately $29 million to $65 million of the total $33 million to $70 million disclosed by nonconnected committees). Additionally at that level, 59% to 68% (16,794 to 44,907 pages) of the total number of pages filed by nonconnected committees would have been filed electronically, causing a significant decrease in paper processing and a corresponding increase in the amount of data more rapidly disclosed.

The number of nonconnected committees affected will be relatively small since the historical data from the 1996 and 1998 election cycles show that only the largest 15% to 22% of the nonconnected committees registered with the Commission would have been required to file electronically.

*5. Separate Segregated Funds*

At the $50,000 level, in the 1996 and 1998 election cycles, of the 2,938 to 2,976 SSFs registered with the Commission, 22% to 28% of them (632 to 825 committees) disclosed 85% to 89% ($138 million to $211 million) of the total SSF financial activity. This represents 63% to 68% (between 94,670 and 110,864 pages) of the total number of pages filed by SSFs. Based on historical data, the decrease in the amount of paper filed would represent approximately 100,000 pages of data and hundreds of millions of dollars available almost instantly on the Commission's web site and in the agency's databases.

The impact on SSFs will be small considering that, in the 1996 and 1998 election cycles, only 22% to 28% of all SSFs registered with the Commission would have been required to file electronically. Thus, the smallest 72% to 78% (approximately 2,300 committees) of SSFs will continue to have the option of filing paper reports.

The NPRM requested comments on whether SSFs should have a lower threshold than other filers because their administrative costs can be paid by their connected organizations. One commenter opposed setting a different threshold because that would lead to confusion and burden SSFs with higher administrative costs than those of other types of committees. The Commission has concluded that it is not appropriate to treat SSFs differently than other types of committees. Therefore it is establishing a uniform $50,000 threshold for all filers.

*6. Other Persons Making Independent Expenditures*

The 1999 amendment to the FECA requires that ''a person'' who is required to file under the Act must file electronically if that person exceeds, or has reason to expect to exceed, the threshold. Therefore, in addition to the committees discussed above, new paragraph (a) of section 104.18 also applies the $50,000 threshold to any other persons defined in 11 CFR 100.10 who are required to file a ''designation, statement or report'' with the Commission. This applies only to individuals or qualified non-profit corporations (''QNCs'') making independent expenditures. 11 CFR 109.2. Thus, under the new rules, individuals and QNCs will be required to file electronically if they make independent expenditures in excess, or that are expected to be in excess, of $50,000 in a calendar year.

Data from the 1996 and 1998 election cycles show that the between 7% and 19% (between 2 and 24 persons) of other persons filing with the Commission had aggregate contributions or aggregate expenditures exceeding $50,000 in a calendar year. During that four year period, those persons who exceeded the threshold accounted for 33% and 50% of all activity by other persons in the non-election years, and as high as 94% of all activity by other persons in the Presidential election year and 91% in the midterm election year.

The effect of the final rules in section 104.18(a) on this category of filer will be small because historical data show that the number of these other filings is very small. For example, in 1995 and 1997 (the non-election years), only two of 28 and 23 filers (less than 10% in each case), respectively, would have been required to file electronically under the proposed rules. In 1996 and 1998 (1996 being a Presidential election year), the total numbers of filers who would have been affected were 24 of 128 filers (19%) and 13 of 75 filers (17%), respectively.

*7. All Committees*

The historical data for the 1996 and 1998 election cycles show that if a $50,000 mandatory electronic filing threshold had been in place at that time, hundreds of thousands of pages would have been filed electronically, dramatically decreasing the amount of paper processed by both committees

[3] Because the data was taken over a period of two election cycles that included a Presidential-election year (1996), a midterm-election year (1998) and two non-election years (1995 and 1997), the number of committees, reports and pages filed and financial figures vary—increasing in election years, decreasing in non-election years. The percentages and numbers used in this document are the high and low figures of the four year span. Please note that the high or low percentage may have come from one year and the high or low actual number may have come from a different year.

and the Commission. Additionally, the amount of financial data that would have been almost instantly disclosed by electronic filing would have been between $544 million and $1.2 billion.

*8. Comments on Threshold Amount*

The Commission received two comments on the $50,000 threshold. While one commenter strongly favored electronic filing to improve disclosure, it urged the Commission to adopt a much lower threshold of $5,000 because that is the level at which candidates are required to register and begin filing with the Commission. The Commission has determined that a $5,000 threshold is not practical. The 1999 amendment to the FECA requires persons to file electronically if they ''have reason to expect to'' exceed the threshold. Under 2 U.S.C. 431(2) and 11 CFR 100.3, an individual is not a candidate and is not required to register and report financial activity until he or she actually exceeds $5,000 in contributions or expenditures. Therefore, to set the electronic filing threshold at $5,000 would require individuals to report electronically before they become candidates under the FECA. Additionally, setting the threshold at $5,000 might be overly burdensome to smaller political committees and other persons who do not have access to the computer hardware required to file electronically.

The second commenter stated that its membership was split over the $50,000 proposed threshold. The commenter recommended raising the threshold to $100,000 per calendar year. The Commission believes that setting the threshold at $100,000 for all committees and other persons would vastly increase the amount of paper to be filed and processed, thus greatly decreasing the amount of information immediately available to the public. For example, according to historical data from the 1996 and 1998 election cycles, by raising the threshold from $50,000 to $100,000 an additional 512–610 committees would be allowed to file paper reports numbering between 2,906 and 6,406. Those reports represented 35,341 to 61,275 pages and between $34 million and $41 million in financial activity. The Commission estimates that processing the increased number of reports and pages at a $100,000 threshold would take a minimum of thirty days to complete. If those additional reports are filed electronically, the information will be on the Commission's web site within a few minutes and in the Commission's indexes within twenty-four to forty-eight hours of receipt.

The second commenter also stated that the $50,000 threshold might be too burdensome on some committees that just slightly exceed the threshold. The Commission notes that some states have laws requiring electronic filing at much lower thresholds. For example, a recent Georgia statute [4] sets the threshold for candidates at $25,000 beginning January 1, 2001. On January 1, 2003, the threshold for candidates drops to $10,000 and the threshold for independent committees (*e.g.,* clubs, associations and political action committees) will be $5,000. In New York, any committee that raises or spends, or has reason to expect to raise or spend, more than $1,000 in a calendar year must file electronically. [5] Given the lower levels set by some states, the Commission has concluded that the $50,000 will not be overly burdensome on political committees.

*9. Threshold Per Calendar Year*

The 1999 amendment to the Act requires that persons who are required to file with the Commission must ''maintain and file a designation, statement or report for *any calendar year* in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate contributions or expenditures in excess of a threshold amount determined by the Commission * * *'' [emphasis added] 113 Stat. 430, 476 (1999). The NPRM proposed calculating the threshold on a calendar year basis but sought comments on whether the threshold should be calculated on an ''election cycle basis'' instead. The NPRM asked whether an election cycle threshold should be used for authorized committees only or for all committees and other persons.

The Commission received one comment on this issue. The commenter stated that SSFs typically operate on a calendar year basis, and therefore there is no basis for calculating the threshold on an election cycle basis.

The Commission has concluded that the threshold must be determined on the calendar year basis for the following reasons. First, the Commission notes that Congress specifically provided for an election-cycle approach regarding reporting of receipts and disbursements by authorized committees in the same legislation that specified a calendar-year approach to the electronic filing thresholds. (Election cycle reporting by authorized committees is being addressed in a separate rulemaking. *See* NPRM 65 FR 25672 (May 3, 2000)). In contrast, the legislative language regarding electronic filing refers to the calendar year and not the election cycle. Thus, the Commission concludes that Congress intended the threshold for mandatory electronic filing to be set on a calendar year basis. Second, there is no mention of treating authorized committees differently than any other committee in either the plain language of the statutory amendment requiring mandatory electronic filing or in its legislative history. Nor is there support for an election cycle approach in the underlying FEC legislative recommendation. Third, since the voluntary electronic filing system requires that once committees start filing electronically they must do so for the remainder of the calendar year, and since the statute requires the voluntary system to be left in place, the Commission believes the intent of the underlying legislative recommendation and of Congress was to maintain the ''for the calendar year'' requirement.

**C. Filing for the Calendar Year**

New paragraph (a)(2) of 11 CFR 104.18 requires that once a filer exceeds, or has reason to expect to exceed, the threshold, the filer must begin filing electronically with his or her next regularly scheduled report and continue filing electronically for the remainder of the calendar year. Paragraph (a)(2) does not require persons to electronically refile any reports, statements or designations that were properly filed on paper earlier in the calendar year or earlier in the election cycle. For example, if an authorized committee files its April quarterly report on paper because it has not exceeded and does not expect to exceed the appropriate threshold and, if in June it exceeds the $50,000 threshold, the committee must electronically file its July quarterly report, but is not expected to go back and electronically refile the April report.

The Commission received one comment on when a committee must begin filing electronically upon exceeding, or having reason to expect to exceed, the threshold. The commenter recommended allowing monthly filers a 90-day grace period between the time they are required to begin filing electronically and their first electronically filed report. The commenter argued that monthly filers would not have time to convert to the electronic filing system if they unexpectedly exceeded the threshold. The commenter noted that quarterly filers who exceed the threshold in the early part of the quarter have a period of time before the first electronic report

[4] 1999 GAH. B. 1630.

[5] NY ELEC § 14–102.

must be filed at the end of the quarter. The Commission cannot adopt this approach for several reasons. First, the 1999 amendment to the FECA requires political committees to file electronically upon exceeding, or having reason to expect to exceed, the threshold. The Commission finds no Congressional intent to allow a grace period. The Commission notes that other sections of the FECA allow a specific number of days before filing is required. For example, an individual has 15 days upon becoming a candidate to designate a principal campaign committee, and a principal campaign committee has 10 days upon being so designated to register with the Commission. 2 U.S.C. 432(e)(1) and 433(a). Had Congress intended to allow electronic filers a similar period of time, it would have so stated. Second, unauthorized committees that file monthly have the option to file quarterly instead. Since the new regulations take effect on January 1, 2001—a non-election year—monthly filers could opt to file under the non-election year quarterly filer schedule. In non-election years, quarterly filers file only mid-year and year-end reports.[6] Thus, the monthly filers will have sufficient time to convert to electronic filing.

Under electronic filing regulations at 11 CFR 104.18(b), voluntary electronic filers must continue filing electronically for the remainder of the calendar year unless the Commission determines that an extraordinary and unforeseen circumstance makes electronic filing impracticable. The Commission sought comments on whether a similar provision allowing a committee or other person to stop filing electronically within the calendar year due to extraordinary and unforeseen circumstances should be included in the proposed rules for mandatory electronic filers. The Commission received no comments on this issue. Because the Commission does not have statutory authority to waive reporting requirements under these circumstances and because it is the intention of the new regulations that persons who are required to file electronically but who file on paper be treated as non-filers (*see* ''4. Non-filers,'' *infra*) the Commission has determined that no such waiver can be established for mandatory electronic filers.

**D. Have Reason to Expect to Have**

The NPRM, in paragraph (a)(3) of 11 CFR 104.18 proposed two tests to determine when a filer has reason to expect to exceed the threshold. (1) A filer should expect to have financial activity above the $50,000 threshold if it exceeded this amount during the comparable year of the previous election cycle; or (2) A filer should expect to have financial activity exceeding the threshold if the committee's aggregate contributions or expenditures exceeded the threshold during the previous calendar year. In addition, comments were sought on three other possible approaches that were not included in the proposed rules—(1) Should the Commission base the expectation solely on the committee's or person's own projections during the year? If so, at what point during the year will political committees and other persons be expected to make the projection? Should it be a one-time forecast at the beginning of the year or a rolling projection that changes as necessary throughout the calendar year? (2) Should new filers having no historical data on which to base a projection, base their expectations of aggregate contributions and expenditures on historical data for similarly situated committees in the previous election cycle; or should such new committees be presumed to have no reason to expect to exceed the threshold until such time as they actually do so? (3) Should a filer have reason to expect to exceed the threshold if it raises or spends more than one quarter of the proposed yearly threshold in the first calendar quarter, or if it raises or spends more than half the threshold in the first half of the calendar year? For example, should a committee be required to file electronically if it raises $30,000 in the first calendar quarter on the grounds that it has reason to expect to exceed the $50,000 threshold within the calendar year?

The Commission received one comment on this issue. The commenter stated that under the first proposed test (the ''comparable year'' test), its members would be able to make a determination of whether they have reason to expect to exceed the threshold. The commenter pointed out, however, that many committees' non-election year receipts are much lower than the previous, election-year receipts. Therefore, the commenter believed that the second proposed test (the ''previous year'' test) would not provide an accurate expectation of contributions or expenditures for many committees.

New paragraph (a)(3)(i) contains a combination of the ''comparable year'' and the ''previous year'' tests proposed in the NPRM. While the Commission understands the commenter's concern with the ''previous year'' test, the Commission believes that the administrative inconvenience of going from electronic to paper filing for filers fluctuating above and below the threshold in election and non-election years, respectively, will be overly burdensome on the filers, as well as on the Commission. Therefore, the Commission is combining the two tests proposed in the NPRM to require that once a committee or other person actually exceeds the threshold, that committee or other person has reason to expect to exceed the threshold in the following two calendar years. For example, if a committee exceeds the threshold in May of 2001, it must electronically file its mid-year report due on July 31, and its year end report due on January 31 of the following year. Furthermore, under new paragraph (a)(3)(i), such a committee has reason to expect to exceed the threshold in 2002 and 2003, and must electronically file its reports for those years.

However, the new rules also contain an exception to electronic filing for certain candidates who do not intend to run in the next federal election. To qualify for this exception, an authorized committee must have $50,000 or less in net debts outstanding on January 1 of the year following the election and must anticipate terminating prior to the next election year. In addition, under this exception, the candidate must not have qualified as a candidate for the next election and must not intend to become a candidate for federal office in the next election. The Commission anticipates that this exception is likely to apply to the campaign committees of many candidates who have lost the election. Candidate's committees meeting these conditions are not likely to have financial activity in excess of the $50,000 threshold after the election because their only financial activity is likely to relate to raising funds to pay off their debts, which total less than $50,000.

The commenter also noted that the third alternative proffered in the NPRM, the ''calendar quarter'' test, would require a committee to extrapolate annual estimates based on first quarter or first half year receipts. The Commission understands the commenter's objection with regard to the ''calendar quarter'' test, however, the Commission concluded that this test will provide a limited means by which filers without any historical data would have reason to expect to exceed the threshold, thus requiring them to file electronically before they actually meet the threshold, more rapidly disclosing their financial activity. Therefore, the

[6] 11 CFR 104.5(c).

''calendar quarter'' test is being added to the final rules as a test only for those filers who have no historical data.

**E. Definition of Reports**

New paragraph (c) adds a definition of *reports.* The 1999 amendment to the FECA defines *report* as ''. . . a report, designation, or statement required by this Act to be filed with the Commission.'' Thus, for purposes of 11 CFR 104.18, *report* means any statement required by the FECA and filed with the Commission. Therefore, reports, designations and statements that are required by the regulations but not the FECA, or that are required to be filed with the Secretary of the Senate, are not subject to the mandatory electronic filing regulations. The Commission received no comments on this provision.

**F. Amending Reports**

The Commission received one comment on paragraph (f) (former paragraph (d)) of section 104.18 regarding amending electronic reports. The commenter urged the Commission to develop a system whereby electronic filers can file letter amendments electronically, rather than filing amended forms electronically. The commenter argued that letter amendments are easier to file and provide greater opportunity for explanation. The Commission's voluntary electronic filing system has required amendments to electronic reports to be filed electronically since the system's inception in 1996. This process has worked well and has provided sufficient information in amendments. Further, since electronic filing should decrease the number of errors in reports, the number and complexity of amendments may decrease as well.

The Commission is deleting the requirement from paragraph (f) that amended reports contain electronic flags or markings that point to the portions of the report that are being amended. The Commission now requires only that amendments comply with the formatting specifications contained in the Electronic Filing Specification Requirements document.

*Section 109.2 Reporting of independent expenditures by persons other than political committees (2 U.S.C. 434(c))*

Previously, under 11 CFR 109.2(a), persons had the option of disclosing independent expenditures by filing either FEC Form 5 or a signed statement. Paragraph (a) is being revised to clarify that electronic filers do not have the option of reporting independent expenditures via signed statement. Beginning with reporting periods after December 31, 2000, anyone who exceeds, or has reason to expect to exceed, the $50,000 threshold, must disclose these independent expenditures electronically on FEC Form 5. Please note that FEC Form 5 must be notarized. Therefore, under paragraph (h) of 11 CFR 104.18, the filer must submit the notary seal and signature either by submitting a paper copy of FEC Form 5 in addition to the electronic form, or by including a digitized version of the notary seal and signature as a separate file in the electronic submission. The Commission anticipates that its free FECFile software will generate FEC Form 5 in the near future. The Commission received no comments on this section.

*Section 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures (2 U.S.C. 434(c)).*

Previously, qualified nonprofit corporations (''QNCs'') could disclose independent expenditures by either filing FEC Form 5 or by filing a signed statement. Revised paragraph (e)(1)(ii) of 11 CFR 114.10 clarifies that if a QNC exceeds, or has reason to expect to exceed, the $50,000 threshold, it must disclose its independent expenditures electronically on FEC Form 5. Please note that FEC Form 5 must be notarized. Therefore, under paragraph (h) of 11 CFR 104.18, the filer may submit the notary seal and signature either by filing a paper copy of FEC Form 5 in addition to the electronic form or by including a digitized version of the notary seal and signature as a separate file in the electronic submission. The Commission anticipates that its free FECFile software will generate FEC Form 5 in the near future. The Commission received no comments on this section.

*Section 9003.1 Candidate and committee agreements (2 U.S.C. 9003(a)).*

Former paragraph (b)(11) of 11 CFR 9003.1 stated that, as a condition of receiving public funding, Presidential candidates are required to agree to file electronically if their data is computerized. The Commission is removing electronic filing as a condition for receiving public funding because these federally financed Presidential candidates will have reason to expect to exceed and, in fact, will exceed the $50,000 threshold and, therefore, are required to file electronically. The Commission received no comments on this section.

*Section 9033.1 Candidate and committee agreements (2 U.S.C. 9033(a)).*

Previously, under paragraph (b)(13) of this section, as a condition of receiving public funding Presidential candidates in the primary elections were required to agree to file electronically if their data is computerized. This requirement is being deleted for the reasons explained above. The Commission received no comments on this section.

**Other Issues**

*1. Computerization of Data and FECFile Software*

The Commission's computer systems are currently capable of receiving all reports that are required under the new regulations. However, the Commission's FECFile software, which is available from the agency at no cost, does not currently generate all required forms. For example, the FECFile software does not currently generate FEC Form 1 and 2 (Statement of Organization and Statement of Candidacy, respectively), FEC Form 3P for Presidential candidates, FEC Form 4 for Convention and Host Committees to report their receipts and disbursements, or FEC Form 5 for persons other than political committees reporting independent expenditures. The Commission plans to update the FECFile software to generate FEC Forms 1 and 2 by January 1, 2001, and anticipates that FECFile will generate FEC Forms 3P, 4 and 5 in the near future. The Commission received one comment suggesting that the Commission's software should be updated to allow committees to import data from the software they currently use for reporting to FECFile. The Commission notes that committees are not required to use the Commission's filing software. The Commission's computer system is designed to accept properly formatted reports using other software packages. The Commission's Data Systems Development Division is working with the software vendor community to assist the vendors in updating their programs to comply with these mandatory electronic filing regulations. The comment was forwarded to the FEC Data Systems Development Division.

*2. Formatting and Standardization Requirements*

The NPRM proposed maintaining the standardization requirements that are present in the current voluntary electronic filing system. When the voluntary electronic filing system was designed, the Commission created ''The Federal Election Commission's

Electronic Filing Specifications Requirements'' (EFSR) document and invited comment on that document at that time. The EFSR is available at no charge on the Commission's web site. The Commission is updating the EFSR and intends to use specifications embodied in the updated EFSR for this mandatory electronic filing program. The Commission uses several means of communication to relay changes in the EFSR or other system changes to electronic filers, including special notices, the FEC's web site, the Record newsletter, and electronic mail.

Please note that the validation program that checks incoming reports is also being updated. For example, upon completion of this update, the program will no longer accept forms on which the figures disclosed within the report do not add up to the figures reported on the detailed summary page and forms indicating the incorrect type of report.

The Commission received no comments on the EFSR or the validation program.

*3. Means of Filing*

The Commission currently accepts properly formatted electronic reports on diskettes (either hand delivered or sent by other delivery means such as U.S. Postal Service). Although the Commission has no plans at this time to cease accepting electronic reports on disk, most electronic filers find it more convenient to file via electronic upload through an Internet connection.

*4. Non-filers*

The FECA and the new regulations at 11 CFR 104.18 make electronic filing mandatory for those political committees, candidates, and other persons who exceed or who have reason to expect to exceed the threshold set by the Commission. Consequently, political committees, candidates, and other persons who are required to file electronically, but who fail to do so, may be subject to the Commission's enforcement process for non-filers and may have their names published as non-filers under 2 U.S.C. 437g(b) and 438(a)(7). This includes those who are required to file electronically but who file paper reports instead. Additionally, in 1999, Congress amended 2 U.S.C. 437g(a)(4) and (6)(A) to authorize the Commission to impose an administrative fine on late and non-filers pursuant to a schedule of civil money penalties. The Commission recently promulgated final rules and penalty schedules. *See* 65 FR 31787 (May 19, 2000). The Commission received no comments on this issue.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

These final rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the Commission's thresholds are set at a sufficiently high level that most, if not all, small political committees are not required to file electronically, although they could continue to do so voluntarily. In the event that any small committees do exceed the proposed threshold, the economic impact is not significant because the committees may obtain the FECFile software from the Commission at no cost, and the Commission anticipates this software will generate all required forms.

**List of Subjects**

*11 CFR Part 100*

Elections.

*11 CFR Part 101*

Political candidates, Reporting and recordkeeping requirements.

*11 CFR Part 102*

Political committees and parties, Reporting and recordkeeping requirements.

*11 CFR Part 104*

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

*11 CFR Part 109*

Elections, Reporting and recordkeeping requirements.

*11 CFR Part 114*

Business and industry, Elections, Labor.

*11 CFR Part 9003*

Campaign funds, Reporting and recordkeeping requirements.

*11 CFR Part 9033*

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapters A, E and F of chapter I of title 11 of the Code of Federal Regulations are amended as follows:

## PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority for part 100 is revised to read as follows:

**Authority:** 2 U.S.C. 431, 434(a)(11), 438(a)(8).

2. Section 100.19 is amended by adding paragraph (c) to read as follows:

**§ 100.19 File, filed or filing (2 U.S.C. 434(a)).**

* * * * *

(c) For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission at or before 11:59 p.m., Eastern Standard/Daylight Time, on the filing date.

## PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

3. The authority citation for part 101 is revised to read as follows:

**Authority:** 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

4. Section 101.1 is amended by revising paragraph (a) to read as follows:

**§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).**

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter containing the same information (that is, the individual's name and address, party affiliation and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee) at the place of filing specified at 11 CFR part 105. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR Parts 102, 103 and 104.

* * * * *

## PART 102—REGISTRATION, ORGANIZATION AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433).

5. The authority citation for part 102 is revised to read as follows:

**Authority:** 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

6. Section 102.2 is amended by revising paragraphs (a)(1)(vi) and (a)(2), and adding (a)(1)(vii) to read as follows:

**§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).**

(a) * * *

(1) * * *

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee; and

(vii) The Internet address of the committee's official web site, if such a web site exists. If the committee is required to file electronically under 11 CFR 104.18, its electronic mail address, if such an address exists.

(2) Any change or correction in the information previously filed in the Statement of Organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or, if the political committee is not required to file electronically under 11 CFR 104.18, by filing a letter noting the change(s). The amendment need list only the name of the political committee and the change or correction.

* * * * *

## PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

7. The authority citation for part 104 continues to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b) and 439a.

8. Section 104.5 is amended by revising paragraph (e) to read as follows:

### § 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(e) *Date of filing.* A designation, report or statement sent by registered or certified mail shall be considered filed on the date of the U.S. post mark except that a twelve day pre-election report sent by certified or registered mail shall be mailed no later than the 15th day before any election. Designations, reports or statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed. Designations, reports or statements electronically filed must be received and validated at or before 11:59 p.m., Eastern Standard/Daylight Time on the prescribed filing date to be timely filed.

* * * * *

9. Section 104.18 is revised to read as follows:

### § 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).

(a) *Mandatory.* (1) Political committees and other persons required to file reports with the Commission, as provided in 11 CFR Parts 105 and 107, must file reports in an electronic format that meets the requirements of this section if —

(i) The political committee or other person has received contributions or has reason to expect to receive contributions aggregating in excess of $50,000 in any calendar year; or

(ii) The political committee or other person has made expenditures or has reason to expect to make expenditures aggregating in excess of $50,000 in any calendar year.

(2) Once any political committee or other person described in paragraph (a)(1) of this section exceeds or has reason to expect to exceed the appropriate threshold, the political committee or person must file electronically all subsequent reports covering financial activity for the remainder of the calendar year. All electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section. Reports filed on paper do not satisfy a political committee's or other person's filing obligations.

(3) Have Reason to Expect to Exceed.

(i) A political committee or other person shall have reason to expect to exceed the threshold stated in paragraph (a)(1) of this section for two calendar years following the calendar year in which the political committee or other person exceeds the threshold unless—

(A) The committee is an authorized committee, and has $50,000 or less in nets debts outstanding on January 1 of the year following the general election, and anticipates terminating prior to January 1 of the next election year; and

(B) The candidate has not qualified as a candidate for the next election and does not intend to become a candidate for federal office in the next election.

(ii) New political committees or other persons with no history of campaign finance activity shall have reason to expect to exceed the threshold stated in paragraph (a)(1) of this section within the calendar year if—

(A) It receives contributions or makes expenditures that exceed one quarter of the threshold amount in the first calendar quarter of the calendar year; or

(B) It receives contributions or makes expenditures that exceed one-half of the threshold amount in the first half of the calendar year.

(b) *Voluntary.* A political committee or other person who files reports with the Commission, as provided in 11 CFR part 105, and who is not required to file electronically under paragraph (a) of this section, may choose to file its reports in an electronic format that meets the requirements of this section. If a political committee or other person chooses to file its reports electronically, all electronically filed reports must pass the Commission's validation program in accordance with paragraph (e) of this section. The committee or other person must continue to file in an electronic format all reports covering financial activity for that calendar year, unless the Commission determines that extraordinary and unforeseeable circumstances have made it impracticable for the political committee or other person to continue filing electronically.

(c) *Definition of report.* For purposes of this section, *report* means any statement, designation or report required by the Act to be filed with the Commission.

(d) *Format specifications.* Reports filed electronically shall conform to the technical specifications described in the Federal Election Commission's Electronic Filing Specifications Requirements. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Electronic Filing Specifications Requirements.

(e) *Acceptance of reports filed in electronic format; validation program.*

(1) Each political committee or other person who submits an electronic report shall check the report against the Commission's validation program before it is submitted, to ensure that the files submitted meet the Commission's format specifications and can be read by the Commission's computer system. Each report submitted in an electronic format under this section shall also be checked upon receipt against the Commission's validation program. The Commission's validation program and the Electronic Filing Specification Requirement are available on request and at no charge.

(2) A report that does not pass the validation program will not be accepted by the Commission and will not be considered filed. If a political committee or other person submits a report that does not pass the validation program, the Commission will notify the political committee or other person that the report has not been accepted.

(f) *Amended reports.* If a political committee or other person files an amendment to a report that was filed electronically, the political committee or other person shall also submit the amendment in an electronic format. The political committee or other person shall submit a complete version of the report as amended, rather than just those portions of the report that are being amended. In addition, amendments must be filed in accordance with the Electronic Filing Specification Requirements.

(g) *Signature requirements.* The political committee's treasurer, or any other person having the responsibility to file a designation, report or statement under this subchapter, shall verify the report in one of the following ways: by submitting a signed certification on

paper that is submitted with the computerized media; or by submitting a digitized copy of the signed certification as a separate file in the electronic submission. Each verification submitted under this section shall certify that the treasurer or other signatory has examined the report or statement and, to the best of the signatory's knowledge and belief, it is true, correct and complete. Any verification under this section shall be treated for all purposes (including penalties for perjury) in the same manner as a verification by signature on a report submitted in a paper format.

(h) *Schedules and forms with special requirements.* The following list of schedules, materials, and forms have special signature and other requirements and reports containing these documents shall include, in addition to providing the required data within the electronic report, either a paper copy submitted with the political committee's or other person's electronic report or a digitized version submitted as a separate file in the electronic submission: Schedule C–1 (Loans and Lines of Credit From Lending Institutions), including copies of loan agreements required to be filed with that Schedule, Schedule E (Itemized Independent Expenditures), Form 5 (Report of Independent Expenditures Made and Contributions Received), and Form 8 (Debt Settlement Plan). The political committee or other person shall submit any paper materials together with the electronic media containing the report.

(i) *Preservation of reports.* For any report filed in electronic format under this section, the treasurer or other person required to file any report under the Act shall retain a machine-readable copy of the report as the copy preserved under 11 CFR 104.14(b)(2). In addition, the treasurer or other person required to file any report under the Act shall retain the original signed version of any documents submitted in a digitized format under paragraphs (g) and (h) of this section.

## PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c)).

10. The authority for part 109 is revised to read as follows:

**Authority:** 2 U.S.C. 431(17), 434(a)(11) and (c), 438(a)(8), 441d.

11. Section 109.2 is amended by revising the introductory text of paragraph (a) to read as follows:

**§ 109.2 Reporting of independent expenditures by persons other than a political committee 2 U.S.C. 434(c)).**

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of $250 during a calendar year shall file a report on FEC Form 5 or, if the person is not required to file electronically under 11 CFR 104.18, a signed statement with the Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

* * * * *

## PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

12. The authority citation for part 114 is revised to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8) and 441b.

13. Section 114.10 is amended by revising paragraph (e)(1)(ii) to read as follows:

**§ 114.10 Nonprofit corporations exempt from the prohibition on independent expenditures.**

* * * * *

(e) * * *

(1) * * *

(ii) This certification may be made either as part of filing FEC Form 5 (independent expenditure form) or, if the corporation is not required to file electronically under 11 CFR 104.18, by submitting a letter in lieu of the form. The letter shall contain the name and address of the corporation and the signature and printed name of the individual filing the qualifying statement. The letter shall also certify that the corporation has the characteristics set forth in paragraphs (c)(1) through (c)(5) of this section.

* * * * *

## PART 9003—ELIGIBILITY FOR PAYMENTS

14. The authority citation for part 9003 continues to read as follows:

**Authority:** 26 U.S.C. 9003 and 9009(b).

**§ 9003.1 [Amended]**

15. Section 9003.1 is amended by removing paragraph (b)(11).

## PART 9033—ELIGIBILITY FOR PAYMENTS

16. The authority citation for part 9033 continues to read as follows:

**Authority:** 26 U.S.C. 9033 and 9039(b).

**§ 9033.1 [Amended]**

17. Section 9033.1 is amended by removing paragraph (b)(13).

Dated: June 16, 2000.

**Darryl R. Wold,**

*Chairman, Federal Election Commission.*

[FR Doc. 00–15668 Filed 6–20–00; 8:45 am]

BILLING CODE 6715–01–P

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

**RIN 0960–AE85**

### Reduction of Title II Benefits Under the Family Maximum Provisions in Cases of Dual Entitlement

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rules.

**SUMMARY:** The interim final rules published at 64 FR 57774, on October 27, 1999, are adopted as final without change. These rules amend the family maximum provisions under title II of the Social Security Act (the Act). These rules amend how we compute the total monthly benefits payable to a family when one or more of the beneficiaries are entitled to benefits on another earnings record. In certain specific circumstances, this change to our rules will increase the amount of benefits payable to some family members entitled on the record to which the family maximum applies. These final rules adopt nationwide the holding of the U.S. Court of Appeals for the First Circuit in *Parisi by Cooney* v. *Chater.*

**DATES:** These regulations are effective October 27, 1999.

**FOR FURTHER INFORMATION CONTACT:** Bill Hilton, Social Insurance Specialist, Office of Program Benefits, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–2468 or TTY (410) 966–5609. For information on eligibility, claiming benefits or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

**SUPPLEMENTARY INFORMATION:**

### Background

Section 203(a) of the Act establishes a limit, derived from a worker's primary insurance amount (PIA), on the total monthly benefits to which dependents or survivors may be entitled on the basis of one worker's earnings record (the family maximum). Under our previous regulations, the benefits of each claimant entitled on the worker's earnings record were reduced proportionally so that the total monthly benefits of those entitled on the record in one month did not exceed the family maximum. In calculating total monthly

benefits, we included all benefits of the claimants who were entitled on the worker's record without considering whether the benefits were actually due or payable.

Our previous regulations were challenged in court by the child of a worker who was disabled. The worker and his dependent child, the plaintiff in this case, began receiving Social Security benefits on the worker's earnings record. The worker's spouse became entitled to retirement benefits (old-age benefits) based on her own earnings record. Under section 202(r) of the Act, she was deemed also to have applied for and become entitled to wife's benefits based on the worker's earnings record. SSA determined that because the monthly retirement benefits that she was entitled to receive on her own exceeded the amount of her monthly wife's benefits on the worker's earnings record, she could only receive payment for the retirement benefits payable on her own earnings record. However, SSA counted the benefits to which she was entitled on the worker's earnings record, but which were not actually paid to her, toward the monthly maximum amount of benefits payable on the worker's earnings record (the family maximum). Because the total monthly amount of the worker's disability benefits, the plaintiff's child's benefits, and the wife's benefits exceeded the monthly family maximum limit, SSA reduced the amount of the plaintiff's and the wife's monthly benefits.

In *Parisi By Cooney* v. *Chater,* 69 F.3d 614 (1st Cir., 1995), the court held that, when computing a reduction under the family maximum pursuant to section 203(a) of the Act, SSA should not include the monthly benefit that would otherwise be payable to a spouse if payment of that spouse's benefit is precluded (by section 202(k)(3)(A) of the Act), due to the spouse's dual entitlement to a higher benefit on the spouse's own earnings record. To implement the Court's ruling in the First Circuit, we issued an Acquiescence Ruling (AR) on January 13, 1997 (62 FR 1792). Under this ruling (AR 97–1(1)), which applied only to claims for benefits in the First Circuit, SSA considers only the amount of monthly dependent's or survivor's benefits actually due or payable to the dually-entitled person when determining the amount of the benefit reduction because of the family maximum. As a result of the Court's decision, we reassessed our interpretation in our prior regulations and consistent with our rules on acquiescence which were designed to restore national uniformity to our programs, we decided to adopt the court's holdings nationwide.

**Explanation of Changes**

We amended § 404.403 of our regulations by adding a new paragraph (a)(5). This new paragraph specifies that, in cases involving benefits subject to reduction for both the family maximum and dual entitlement, we consider only the amount of monthly dependent's or survivor's benefits actually due or payable to the dually-entitled person when we determine how much to reduce total monthly benefits because of the family maximum. We included examples of how we compute benefits payable in such cases.

These changes are effective for benefits payable for months after September 1999.

**Comments on Interim Final Rules**

On October 27, 1999, we published the interim final rules in the **Federal Register** at 64 FR 57774 and provided a 60-day period for interested individuals and organizations to comment. We received comments from five individuals and organizations concerning this action. One comment was from the firm that represented the plaintiff in the *Parisi by Cooney* v. *Chater* case. They expressed their pleasure that SSA was making this change nationwide. Following are summaries of the comments and our responses to them.

*Comment:* One commenter said that a person entitled as a husband or wife should still receive full benefits on his or her own record.

*Response:* When a husband or wife is entitled to benefits as a spouse and to benefits on his or her own earnings record, he or she receives the full benefit on his or her own record. This is in accordance with section 202(k)(3)(A) of the Act and is unaffected by these rules.

*Comment:* The same commenter believes that when a person can receive a higher benefit as a spouse, the family maximum should apply on the record where the spouse benefit is payable.

*Response:* When an excess benefit as a spouse is payable on a record, the benefits on that record are subject to the family maximum. While the family maximum will still apply if other family members are entitled, this change will allow more to be paid on that record because only the amount actually paid to the dually entitled person will be considered.

*Comment:* This commenter also felt children should be paid on the record with the higher benefit and those benefits should be based on the family maximums from both records.

*Response:* When each parent is entitled on his or her own record, children are paid on the record with the higher benefit amount. Benefits to the children are based on the total of both family maximums. This is in accordance with section 203(a)(3)(A) of the Act.

*Comment:* This commenter finished by stating that the regulations should be adopted because they will liberalize the family maximum restrictions.

*Response:* These regulations do liberalize the family maximum provisions and will result in higher benefit amounts to those affected.

*Comment:* Two commenters believe the family maximum should be eliminated because it limits the benefits payable. One felt this is unfair to those with large families. One also believes workers should be allowed to opt out of Social Security coverage.

*Response:* The family maximum is set forth in the Act itself, and could be eliminated only by legislation. Similarly, legislative changes would be needed to permit workers to opt out of Social Security coverage. Such issues are beyond the scope of both these regulations and our rulemaking authority.

*Comment:* Another commenter suggested that we include an example of how benefits would be calculated for a surviving spouse who is also entitled on her own record.

*Response:* These regulations do not change the way benefits are computed for a surviving spouse who is also entitled on her own record. She will still receive her own benefit first, plus any excess over that amount which is payable to her as a surviving spouse.

*Comment:* The same commenter asked how these regulations affect the spouse of a retired military person because the military Survivor's Benefits program is affected by Social Security Offset.

*Response:* These regulations do not change how her Social Security benefit is computed. There is no change in how the benefit affects the receipt of a military Survivor's Benefit.

For the reasons discussed above, we have not changed the interim final rules based on the public comments. Therefore, the interim final rules are adopted as final without change.

Dated: June 9, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

## PART 404–FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )

Accordingly, the interim final rules amending 20 CFR Part 404 published at 64 FR 57774 on October 27, 1999, are adopted as final without change.

[FR Doc. 00–15644 Filed 6–20–00; 8:45 am]

BILLING CODE 4191–02–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 99F–1421]**

## Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers; Technical Amendment

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its food additive regulations that provide for the safe use of tetradecanoic acid, lithium salt as a stabilizer for polypropylene and certain polypropylene copolymers intended for use in contact with food. When the regulation was last amended, the regulation published with some errors. This document corrects those errors.

**DATES:** This rule is effective June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

**SUPPLEMENTARY INFORMATION:** FDA has discovered that two errors have become incorporated into the agency's current food additive regulations. In an amendment to 21 CFR 178.2010, published in the **Federal Register** of December 27, 1999 (64 FR 72273), there were errors regarding the food type VI–B. This document corrects those errors. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

### List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) under the heading ''Limitations'' by revising the entry for ''Tetradecanoic acid, lithium salt'' to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * * * * * | |
| Tetradecanoic acid, lithium salt (CAS Reg. No. 20336–96–3) | For use only at levels not to exceed 0.15 percent by weight of polypropylene and polypropylene copolymers complying with § 177.1520(c) of this chapter, items 1.1a, 1.1b, 3.1a, 3.1b, 3.1c, 3.2a, and 3.2b. The finished polymers may only be used in contact with food of Types I, II, IV–B, VI–B, VII–B, and VIII as described in table 1 of § 176.170(c) of this chapter under conditions of use B through H as described in table 2 of § 176.170(c) of this chapter, and with food of Types III, IV–A, V, VI–A, VI–C, VII–A, and IX described in table 1 of § 176.170(c) of this chapter under conditions of use C through G as described in table 2 of § 176.170(c) of this chapter. |
| * * * * * * * | |

Dated: June 7, 2000.

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–15561 Filed 6–20–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 349

**[Docket No. 98N–0002]**

**RIN 0910–AA01**

## Ophthalmic Drug Products for Over-the-Counter Human Use; Amendment of Final Monograph

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

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the monograph for over-the-counter (OTC) ophthalmic drug products (the regulation that establishes conditions under which these drug products are generally recognized as safe and effective and not misbranded). The amendment adds a new warning and revises an existing warning for ophthalmic vasoconstrictor drug products. These products contain the ingredients ephedrine hydrochloride, naphazoline hydrochloride, phenylephrine hydrochloride, or

tetrahydrozoline hydrochloride and are used to relieve redness of the eye due to minor eye irritations. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** *Effective Date:* This rule is effective May 16, 2002.

*Compliance Date:* The compliance date for products with annual sales less than $25,000 is May 16, 2003. The compliance date for all other OTC drug products is May 16, 2002.

**FOR FURTHER INFORMATION CONTACT:** Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In the **Federal Register** of March 4, 1988 (53 FR 7076), FDA published a final monograph for OTC ophthalmic drug products in part 349 (21 CFR part 349). That monograph includes four ophthalmic vasoconstrictor active ingredients in § 349.18. Section 349.3(i) defines an ophthalmic vasoconstrictor as ''A pharmacologic agent which, when applied topically to the mucous membranes of the eye, causes transient constriction of conjunctival blood vessels.'' Section 349.75(a) and (b) provide that these products are labeled with the statement of identity ''redness reliever'' or ''vasoconstrictor (redness reliever)'' ''eye'' or ''ophthalmic'' [dosage form, e.g., ''drops''] and with the indication for use ''Relieves redness of the eye due to minor eye irritations.'' Section 349.75(c)(2) requires these products to bear the warning statement: ''If you have glaucoma, do not use this product except under the advice and supervision of a doctor.''

In the **Federal Register** of February 23, 1998 (63 FR 8888), the agency published a proposed amendment of the monograph for OTC ophthalmic drug products to revise this glaucoma warning by adding the words ''narrow angle'' before the word ''glaucoma'' and to add a new warning for ophthalmic vasoconstrictor drug products that states: ''Pupils may become dilated (enlarged).'' The agency also invited comment on whether to add the words ''This is temporary and not serious'' as a required or optional statement after the proposed new warning. The agency explained that these proposed labeling revisions were based primarily on the labeling approved in recent years for three new drug applications (NDA's) for ophthalmic drug products containing pheniramine maleate and naphazoline hydrochloride and adverse drug experience (ADE) reports submitted to those NDA's.

Interested persons were invited to submit comments on the proposal and on the agency's economic impact determination by May 26, 1998. In response to the proposed monograph amendment, one trade association of OTC drug manufacturers submitted a comment, a copy of which is on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The agency has considered the comment in proceeding with this final rule. A summary of the comment with FDA's response follows.

## II. Summary of the Comment Received

The comment supported the agency's rationale for the proposed warning regarding narrow angle glaucoma, stating that the clarification of the warning was clinically rational and in the best interest of the public health. The agency is including this revision in this final rule.

The comment disagreed with the warning statement about pupils becoming dilated, stating that the warning is not appropriate for single ingredient ophthalmic vasoconstrictor drug products. The comment noted that the agency's proposal is based on ADE reports from combination antihistamine-vasoconstrictor ophthalmic products, while pupil dilation reports for single ingredient vasoconstrictor ophthalmic products are rare, given the high incidence of exposure to these products. The comment provided comparative figures to show that the ADE profile is different for the two types of products, concluding that the numbers do not justify a new warning on single ingredient products. The comment requested the agency to withdraw its proposal for this pupil dilation warning for single ingredient, monographed ophthalmic vasoconstrictor drug products.

The agency does not accept the comment's suggestion. Both the Advisory Review Panel on OTC Ophthalmic Drug Products (45 FR 30002 at 30033, May 6, 1980) and standard text books (Ref. 1) state that pupil dilation is a known pharmacologic effect of sympathomimetic drugs such as these ophthalmic vasoconstrictors. In both the combination (antihistamine-vasoconstrictor) and the single ingredient (vasoconstrictor) products, the vasoconstrictor ingredient is considered the cause of the pupil dilation. The difference in ADE reports between single ingredient and combination products may be because the combination products are marketed under NDA's, which have ADE reporting requirements. The agency stated in the proposal and concludes here that it would be beneficial and informative to consumers who use these products (single ingredient or combination) to know that their pupils may become enlarged temporarily. Therefore, the agency is including a warning in this final rule.

The comment contended that the pupil dilation warning appears to have little practical relationship to the goal of reducing ADE reports to the agency. The comment added that the potential for pupil dilation is not serious and, thus, questioned the need to mention the event in product labeling. The comment did not offer any alternative language for the warning.

The agency believes that the comment misunderstood the agency's objective, which was not to reduce the number of ADE reports to the agency. Rather, the agency's objective in proposing to add the warning was to inform consumers about this effect of the drug and to improve their self-use of these products. The agency concludes that information in the product's labeling about pupil dilation will enable many consumers to continue using these products and not discontinue use after one or two instillations because they do not know to expect possible temporary pupil enlargement to occur. The agency has decided to combine the second statement discussed in the proposal (''This is temporary and not serious.'') with the first statement in a shortened version in this final rule. The warning, in the new OTC drug labeling format, now reads: ''When using this product [in bold type] pupils may become enlarged temporarily.''

## III. The Agency's Final Conclusions

The agency concludes that adding the following new warning in § 349.75(c)(5) would benefit consumers who use an OTC ophthalmic drug product containing a vasoconstrictor active ingredient: ''When using this product [in bold type] pupils may become enlarged temporarily.'' The agency is amending § 349.75(c)(2) to add the words ''narrow angle'' before ''glaucoma.'' The warning now reads, in the new OTC drug labeling format: ''Ask a doctor before use if you have [in bold type] narrow angle glaucoma.''

## IV. Reference

1. ''Drug Facts and Comparisons,'' Facts and Comparisons, St. Louis, p. 483b, 1998 ed.

**V. Analysis of Impacts**

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities.

Title II of the Unfunded Mandates Reform Act requires that agencies prepare a written statement and economic analysis before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive Order and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order. This section constitutes the agency's final regulatory flexibility analysis under the Regulatory Flexibility Act. Further, because this final rule makes no mandates on government entities and will result in expenditures less than $100 million in any one year, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to add a new warning and to revise an existing warning for OTC ophthalmic vasoconstrictor drug products. These warning statements should improve consumers' self use of these drug products and enable some consumers with glaucoma to self medicate when necessary. The agency stated in the proposal that manufacturers of these products will incur costs to relabel their products to include the new labeling information (63 FR 8888 at 8889). The agency indicated that relabeling costs of the type required by this rule generally average about $2,000 to $3,000 per stock keeping unit (SKU) (individual products, packages, and sizes). In determining this cost, the agency did not believe that manufacturers would need to increase the package size to add the few additional words in the new warning. Almost all of these products are marketed in an outer carton which should have adequate space for the additional information. The agency noted that 50 manufacturers, most of which are small manufacturers, together produce about 100 SKU's of OTC ophthalmic vasoconstrictor drug products marketed under the monograph. There may be a few additional small manufacturers or products in the marketplace that are not identified in the sources FDA reviewed. Assuming that there are about 100 affected OTC SKU's in the marketplace, FDA estimated that the rule would impose total one-time compliance costs on industry for relabeling of about $200,000 to $300,000. The agency did not receive any comments on these estimates.

The agency believes the actual cost could be lower for several reasons. First, most of the label changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling. However, the final rule will not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. Second, the agency has made the compliance dates for this final rule the same as the dates for these monographed products to be in compliance with the new standardized format and standardized content requirements for the labeling of OTC drug products (21 CFR 201.66), which are now May 16, 2002 (and May 16, 2003, for products with annual sales less than $25,000). Thus, all required labeling changes can be made at the same time, thereby reducing the labeling cost of this final rule.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that coordination of this labeling change with implementation of the new OTC ''Drug Facts'' labeling may significantly reduce the costs of this final rule. Both a shorter and a longer time period for this rule may cost more if firms would have to undertake two successive labeling revisions. In addition, a longer time period would unnecessarily delay the benefit of the new labeling to consumers who self-medicate with these OTC ophthalmic vasoconstrictor drug products. The agency rejected an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, the agency is providing a compliance date of May 16, 2003 for products with annual sales less than $25,000.

This analysis shows that the agency has undertaken important steps to reduce the burden to small entities. Thus, this economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

**VI. Paperwork Reduction Act of 1995**

FDA concludes that the labeling requirements in this final rule are not subject to review by the Office of Management and Budget because they do not constitute a ''collection of information'' under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the warning statements are a ''public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public'' (5 CFR 1320.3(c)(2)).

**VII. Environmental Impact**

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**List of Subjects in 21 CFR Part 349**

Labeling, Ophthalmic goods and services, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 349 is amended as follows:

## PART 349—OPHTHALMIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 349 continues to read as follows:

**Authority:** 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 349.75 is amended by revising paragraph (c)(2) and by adding paragraph (c)(5) to read as follows:

**§ 349.75 Labeling of ophthalmic vasoconstrictor drug products.**

* * * * *

(c) * * *

(2) ''Ask a doctor before use if you have [in bold type] narrow angle glaucoma.''

* * * * *

(5) ''When using this product [in bold type] pupils may become enlarged temporarily.''

* * * * *

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15631 Filed 6–20–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### 29 CFR Part 1952

### State Plans: Coverage of the United States Postal Service and Other Coverage Issues—Changes to Level of Federal Enforcement for Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, the Virgin Islands, Washington and Wyoming; Correction

**AGENCY:** Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

**ACTION:** Final rule; correction.

**SUMMARY:** The Occupational Safety and Health Administration published in the **Federal Register** on June 9, 2000 (65 FR 36617), a document amending its regulations on State Plans to reflect Federal coverage of the United States Postal Service and other coverage issues. In subpart Q, Kentucky, § 1952.236, where the plan may be inspected, was inadvertently designated as § 1952.96. This document corrects that designation.

**EFFECTIVE DATE :** June 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Friedman, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U. S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–1999.

**SUPPLEMENTARY INFORMATION:**

#### Correction of Publication

In the final rule (FR Doc. 00–14150) published in the **Federal Register** on June 9, 2000 (65 FR 36617), make the following correction:

## PART 1952—[CORRECTED]

#### § 1952.236 [Corrected]

On page 36625, in the first column, following amendatory instruction 31, correctly designate § 1952.96 as § 1952.236.

**Authority:** This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, D.C. the 14th day of June, 2000.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 00–15558 Filed 6–20–00; 8:45 am]

BILLING CODE 4510–26–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

### Final Flood Elevation Determinations

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

**ACTION:** Final rule.

**SUMMARY:** Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**EFFECTIVE DATES:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

**ADDRESSES:** The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, 500 C Street SW., Washington, DC 20472, (202) 646–3461.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

#### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

#### Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

#### Regulatory Classification

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

#### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

#### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

### § 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| **DELAWARE** | |
| **New Castle County (Unincorporated Areas (FEMA Docket No. 7303)** | |
| *Unnamed Tributary to Mill Creek:* | |
| Just upstream of Loblolly Court | *267 |
| Approximately 870 feet upstream of Loblolly Court | *281 |
| **Maps available for inspection** at the New Castle Government Center, 87 Reads Way, New Castle, Delaware. | |
| **NEW YORK** | |
| **Peru (Town), Clinton County (FEMA Docket No. 7307)** | |
| *Ausable River:* | |
| Approximately 0.59 mile downstream of U.S. Route 9 | *103 |
| Approximately 0.83 mile upstream of U.S. Route 9 | *116 |
| *Little Ausable River:* | |
| Upstream side of Delaware and Hudson Railroad bridge | *103 |
| Downstream side of Jarvis Road | *321 |
| *Silver Stream:* | |
| Approximately 320 feet downstream of U.S. Route 9 | *103 |
| Downstream side of I–87 Northbound | *185 |
| *Button Brook:* | |
| At confluence with Little Ausable River | *284 |
| Downstream side of Peasleeville Road | *366 |
| **Maps available for inspection at** the Peru Town Hall, 3036 Main Street, Peru, New York. | |
| **NORTH CAROLINA** | |
| **Clayton (Town), Johnston County (FEMA Docket No. 7303)** | |
| *Little Creek:* | |
| Approximately 1,000 feet downstream of Ranch Road (State Route 1560) | *197 |
| Just downstream of Robertson Street (State Highway 1552) | *250 |
| **Maps available for inspection** at the Clayton Town Hall, Planning Department, 231 East 2nd Street, Clayton, North Carolina. | |
| **Johnston County (Unincorporated Areas) (FEMA Docket No. 7303)** | |
| *Little Creek:* | |
| At confluence with Swift Creek | *156 |
| Approximately 1,000 feet downstream of Ranch Road (State Route 1560) | *197 |
| *Swift Creek:* | |
| Approximately 0.4 mile downstream of confluence of Little Creek | *154 |
| At Wake County line | *203 |
| *Poplar Creek:* | |
| Approximately 700 feet downstream of Wilson Mills Road (State Route 1913) | *129 |
| Approximately 2,000 feet downstream of Twin Oak Drive | *178 |
| *Unnamed Tributary #1 to Swift Creek:* | |
| At the confluence of Swift Creek | *193 |
| At the Wake County line | *218 |
| *Unnamed Tributary #2 to Swift Creek:* | |
| At the confluence with Swift Creek | *178 |
| Just upstream of Cornwallis Road (State Route 1552) | *262 |
| *White Oak Creek:* | |
| At the confluence with Swift Creek | *187 |
| At the Wake County line | *223 |
| *Little Poplar Creek:* | |
| At the confluence with Poplar Creek | *141 |
| Approximately 100 feet upstream from U.S. Highway 70 | *247 |
| **Maps available for inspection** at the Johnson County GIS Department, 207 East Johnston Street, Smithfield, North Carolina. | |
| **Wilson's Mills (Town), Johnston County (FEMA Docket No. 7303)** | |
| *Poplar Creek:* | |
| Approximately 0.76 mile downstream of Twin Oak Drive | *170 |
| Corporate limits to Swift Creek Road | *196 |
| **Maps available for inspection** at the Wilson's Mills Town Hall, 22 Fire Department Road, Wilson's Mills, North Carolina. | |
| **OHIO** | |
| **Harbor View (Village), Lucas County (FEMA Docket No. 7295)** | |
| *Maumee Bay:* Approximately 300 feet east of the intersection of Autokee Street and Lakeview Avenue | *579 |
| **Maps available for inspection** at the Harbor View Village Hall, 327 Lakeview Drive, Harbor View, Ohio. | |
| **Holland (Village), Lucas County (FEMA Docket Nos. 7227 and 7295)** | |
| *Drennan Ditch:* | |
| At confluence with Wolf Creek | *619 |
| At Village corporate limits | *634 |
| *Wolf Creek:* | |
| Approximately 1,200 feet downstream of Holloway Road | *617 |
| Approximately 700 feet upstream of Holloway Road | *620 |
| **Maps available for inspection** at the Village of Holland Municipal Building, 1245 Clarion, Holland, Ohio. | |
| **Oregon (City), Lucas County (FEMA Docket No. 7295)** | |
| *Maumee Bay:* Approximately 1,300 feet northwest of the intersection of Alabama Street and Mississippi Street | *580 |
| *Lake Erie:* At the intersection of Norden Road and Jacobs Road | *579 |
| **Maps available for inspection** at the City of Oregon Building and Zoning Inspection Department, 5330 Seaman Road, Oregon, Ohio. | |
| **Sylvania (City), Lucas County (FEMA Docket No. 7227)** | |
| *Schrieber Ditch:* | |
| Approximately 850 feet downstream of Centennial Road | *673 |
| Downstream side of Centennial Road | *676 |
| **Maps available for inspection** at the City of Sylvania Administration Building/Services Department, 6730 Monroe Street, Suite 101, Sylvania, Ohio. | |
| **Toledo (City), Lucas County (FEMA Docket Nos. 7227 and 7295)** | |
| *Ottawa River:* | |

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD) |
|---|---|
| At the City of Toledo corporate limits | *580 |
| At CSX Transportation | *580 |
| *Swan Creek:* | |
| At the confluence with Maumee River | *580 |
| Approximately 105 feet upstream of Monroe Street | *580 |
| *Maumee River:* | |
| At the confluence with Maumee Bay | *580 |
| Approximately 0.6 mile downstream of the corporate limits | *581 |
| *Maumee Bay:* Entire coastline within the City of Toledo | *580 |
| *Otter Creek:* | |
| Upstream side of Taylor Road | *585 |
| Downstream side of Seaman Street | *585 |
| *Haefner Ditch:* | |
| Approximately 330 feet upstream of Holland-Sylvania Road | *634 |
| Approximately 0.5 mile upstream of Holland-Sylvania Road | *638 |
| *Hill Ditch:* | |
| Upstream side of Elmer Drive | *627 |
| Approximately 600 feet upstream of Orchard Hills Boulevard | *637 |
| *Delaware Creek:* | |
| Confluence with Maumee River | *581 |
| Approximately 30 feet downstream of Rohr Road | *581 |
| **Maps available for inspection** at the City of Toledo Division of Building Inspection, One Government Center, Suite 1600, Toledo, Ohio. | |
| **Waterville (Village), Lucas County (FEMA Docket No. 7227)** | |
| *Maumee River:* | |
| Approximately 0.8 mile upstream of Dutch Road | *607 |
| Approximately 1.2 miles upstream of Forst Road | *624 |
| **Maps available for inspection** at the Waterville Village Hall, 25 North Second Street, Waterville, Ohio. | |
| **Whitehouse (Village), Lucas County (FEMA Docket No. 7295)** | |
| *Lone Oak Ditch:* | |
| Just downstream of Whitehouse-Spencer Road | *645 |
| Just upstream of Waterville Street | *655 |
| **Maps available for inspection** at the Village of Whitehouse Zoning and Building Department, 6655 Providence Street, Whitehouse, Ohio. | |
| **PENNSYLVANIA** | |
| **Delaware Water Gap (Borough), Monroe County (FEMA Docket No. 7303)** | |
| *Delaware River:* | |
| Approximately 1.2 miles downstream of Interstate 80 | *313 |
| Approximately 500 feet downstream of confluence with Cherry Creek | *321 |
| **Maps available for inspection** at the Delaware Water Gap Borough Office, 49 Main Street, Delaware Water Gap, Pennsylvania. | |

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

Dated: May 16, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–14294 Filed 6–20–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Parts 2 and 15

**[ET Docket No. 94–124; FCC 00–161]**

## Use of Radio Frequencies Above 40 GHz for New Radio Applications.

**AGENCY:** Federal Communications Commision.

**ACTION:** Final rule; denial.

**SUMMARY:** This document denies the Petitions for Reconsideration filed by the National Radio Astronomy Observatory (''NRAO'') and New England Digital Distribution, Inc., (''NEDD''). These petitions requested reconsideration of the Commission's Third Report and Order (''third Order'') in this proceeding. This action reaffirms the previous Commission decisions on the spurious emission limit for unlicensed vehicular radar devices operating in the 76–77 GHz band, and the coordination channel and transmitter identification requirements contained in the spectrum etiquette for unlicensed operation in the 59–64 GHz band.

**FOR FURTHER INFORMATION CONTACT:** Rodney Conway, Office of Engineering and Technology, (202) 418–2904.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Order*, ET Docket 94–124, FCC 00–161, adopted May 8, 2000 and May 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

### Summary of the Memorandum Opinion and Order

1. The NRAO filed a Petition for Reconsideration requesting a more stringent spurious emission limit of 2 pW/cm² rather than the limit of 1000 pW/cm² for vehicle radar systems operating in the 76–77 GHz band. NEDD filed a Petition for Reconsideration of the coordination channel and transmitter identification requirements of the spectrum etiquette for unlicensed operation in the 59–64 GHz band. These petitions requested reconsideration of the Commission's Third Report and Order (''Third Order'') in this proceeding, 63 FR 42276, August 7, 1998.

*Emission Limits Above 200 GHz*

2. The NRAO requests a more stringent spurious emission limit of 2 pW/cm² as measured at three meters for unlicensed devices operating in the 76–77 GHz band. The NRAO petition provides no new information to support its request; it instead points to comments filed by the National Academy of Sciences Committee on Radio Frequencies (''CORF'') earlier in this proceeding as the basis for its request. NRAO alleges that, in the Third Order, the Commission did not adequately address the specific concerns or calculations set forth by CORF, nor did it explain the basis of its beliefs in rejecting CORF's proposed limits in favor of those recommended by the National Telecommunications and Information Administration (''NTIA''). NRAO believes that such a failure to address the key argument is arbitrary and capricious and does not constitute reasoned decision-making.

3. Our review reveals that CORF essentially assumes that the vehicular radars will be within boresight of or targeted at the radio astronomy receive antenna and be capable of radiating a coherent and focused emission directly into a 0 dBi side lobe of a radio astronomy antenna without taking into account any attenuation from the atmosphere, intervening terrain, angular separation or elevation separation that may be present. In addition, we note that IEEE Vehicular Radar Standards

Subcommittee document VRS–96–6 states that radio astronomy observatories typically have control over access to a distance of one kilometer from the telescopes to provide protection from interference caused by automobile spark plugs and other uncontrolled RFI sources. It is unclear from reading the comments why CORF selected a distance of 250 meters as a distance beyond which radio astronomy operations are not able to restrict operation of RF devices. We are aware that the radio astronomy observatory at Kitt Peak, Arizona may have had a controlled distance of less than 1 kilometer due to the public access afforded the site. We also note that NRAO has announced that they will be closing the millimeter wave telescope at Kitt Peak on July 1, 2000. The record in this proceeding has not made us aware of any other radio astronomy observatories that offer similar essential public access. We note that the IEEE standard implies that radio astronomy observatories do have control of areas surrounding their receive antennas. As a result there may be interference mitigation procedures, such as erecting a fence, that could be utilized to further minimize the potential for receiving any interference from the vehicular radars. Given the limited number of radio astronomy observatories and the potential benefit of these unlicensed devices we encourage the radio astronomy community and the automobile industry to work together to develop interference mitigation procedures.

4. We have carefully considered NRAO's petition for reconsideration and related comments and determine that the public interest will be best served by adopting rules that will permit the introduction of these unlicensed vehicular radar devices. We conclude that the public interest would best be served by maintaining the spurious emission level of 1000 pW/cm$^2$, which provides adequate protection to radio astronomy observatories without being unreasonably restrictive for unlicensed vehicular radar devices. Accordingly, NRAO's petition for reconsideration is denied.

*Spectrum Etiquette*

5. In the Third Order the Commission adopted a spectrum etiquette for unlicensed operation in the 59–64 GHz band. Included in the spectrum etiquette is the reservation of the 59.0–59.05 GHz band as a designated coordination channel. In addition, the etiquette requires that any transmitter operating with a peak power equal to or greater than 0.1 mW in the 59.05–64 GHz band must transmit once every second a transmitter identification data block that contains the following: (1) The FCC identifier, which is programmed at the factory; (2) a manufacturer's serial number, also programmed at the factory; and (3) at least 24 bytes of user definable data.

6. In its petition, NEDD states that the requirement for a special coordination channel at 59.0–59.05 GHz will impose an unfair burden on developers of point to point systems and appears to violate the spirit of unencumbered commercial development. NEDD further states that because there is no specific protocol or definition for the transmitter identification data block and no database for these identifiers, it appears that the Millimeter Wave Communications Working Group (''MWCWG'') has proposed this etiquette to gain a tactical advantage over other innovators. NEDD provides no new facts to support its assertions.

7. The Commission reserved 50 MHz of spectrum and named it a coordination channel. However, we believe that the 50 MHz of spectrum would be more aptly referred to as a reserve channel. The reserve channel was established in order to save a 50 MHz block of spectrum for use as a future test bed to determine techniques for mitigating or eliminating interference that may occur between different unlicensed transmitters operating in the 59–64 GHz band. We believe that NEDD may have viewed the coordination channel as a requirement to utilize the 59.0–59.05 GHz band to coordinate the simultaneous operation of multiple unlicensed devices. As indicated in our rules, the 50 MHz of spectrum can only be utilized after receiving approval under the experimental authorization provisions of part 5 of the Commission's rules. As a result, our rules do not require any operation in the 50 MHz of reserved spectrum.

8. In order to provide manufacturers with maximum flexibility in the design of unlicensed devices that operate in the 59–64 GHz band, no specific method of encoding the transmitter identification was included in the Commission's rules. In its opposition to the NEDD petition, the MWCWG notes that the Commission's rules require each application for equipment authorization to specify how interested parties can obtain sufficient information, at no cost, to enable them to detect fully and decode the transmitter identification information, which can be used to identify a source of interference. MWCWG observes that this requirement simply provides manufacturers and operators with a tool to mitigate and resolve interference among unlicensed users of the 59–64 GHz band, without the intervention of the FCC.

9. We agree with MWCWG's observation that the sharing and coordination benefits provided by the transmitter identification requirement outweigh any burden it imposes. We find that the transmitter identification requirement does not thwart or delay development or deployment of unlicensed devices. Nor does the rule provide any tactical advantage to any manufacturer because all manufacturers of unlicensed devices that operate in the 59–64 GHz band have to comply with the requirement. Accordingly, the petition for reconsideration filed by NEDD is denied.

10. Pursuant to the authority contained in sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, *It is Ordered* that the Petitions for Reconsideration filed by National Radio Astronomy Observatory and New England Digital Distribution, Inc., Are Denied.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–15578 Filed 6–20–00; 8:45 am]

**BILLING CODE 6712–01–U**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CC Docket No. 98–67; FCC 00–56]**

### Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document amends Commission rules governing the delivery of telecommunications relay services to expand the kinds of relay services available to consumers and to improve the quality of relay service. The Commission amended its rules to better conform to the statutory mandate that TRS must be ''functionally equivalent'' to voice telecommunications service to the extent possible. Among other things, these rules are intended to improve the speed at which calls are answered and conversations relayed.

**DATES:** Section 64.604 is effective on June 30, 2000, however compliance is not required until the dates stated in

that section. The remaining sections are effective on December 18, 2000, except for §§ 64.604(b)(2), 64.604(c)(1), §§ 64.604(c)(5)(i), and 64.605(f) which contain information collection that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date. Written comments by the public on the new information collections are due August 21, 2000.

**ADDRESSES:** Federal Communications Commission, 445–12th Street, SW, TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Jones, Attorney, 202/418–2357, Fax 202/418–2345, TTY 202/418–0484, *majones@fcc.gov,* Common Carrier Bureau. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (Report and Order) in the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 00–56, adopted February 17, 2000 and released March 6, 2000. The full text of the item is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW, Suite CY–B400, Washington, DC 20554, phone (202) 857–3800. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

**Synopsis of the Report and Order**

1. In January 1997, we released a Notice of Inquiry (NOI) on the quality of TRS service. Based on the record developed in the NOI, the Commission released a Notice of Proposed Rulemaking (NPRM) that proposed rules to enhance the quality of telecommunications relay service. In response, the Commission received numerous suggestions on ways to improve TRS. After considering the many comments received, we released this Report and Order. These rules will greatly improve the quality of TRS and fulfill section 225's mandate by increasing the availability and usefulness of the telecommunications system for Americans with speech and hearing disabilities.

2. Specifically, in the Report and Order, we find that the statutory definition of telecommunications relay services is not limited to relay services using a TTY, and includes STS, VRI and non-English language relay services; require that common carriers provide STS and interstate Spanish relay services by March 1, 2001; do not require VRI, but encourage it by permitting the recovery of the costs of both intrastate and interstate VRI calls from the interstate TRS Fund.

3. Speech-to-speech relay service, or STS, involves the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken. The availability of STS gives persons with certain speech disabilities an efficient alternative to using a TTY, which requires the purchase and use of TTY hardware and which also can be a cumbersome form of conversation given the typing involved. Video relay interpreting, or VRI, allows TRS users with hearing or speech disabilities to communicate with voice telephone users through video equipment installed at the user's premises and at the relay center. This video link allows a CA to view and interpret the caller's sign language and relay the conversation to a voice caller.

4. In addition, in the Report and Order, we require that all relay services, whether mandatory or voluntary, funded by intrastate and interstate TRS Funds must comply with minimum service quality standards, which modifies the rules to accommodate STS and VRI service.

5. To improve the minimum standards for TRS, we modify the speed of answer requirement so that consumers will reach a communications assistant more quickly; impose a minimum typing speed of 60 wpm for CAs in order to speed the transmission of calls using TTYs; and amend the rules to minimize disruption during relay calls by establishing a minimum time that a CA must stay with a call.

6. The remainder of the Report and Order establishes that information gathered by relay providers on individual caller preferences and used to complete TRS calls is not customer proprietary network information (CPNI) under section 222 of the Act, must be transferred during a change in TRS provider and cannot be used for any purpose other than the handling of TRS calls; requires TRS providers to automatically and immediately transfer emergency calls to the appropriate 911 operator and relay the caller's number to the operator orally; clarifies that the existing rule requires outreach to all callers and for all forms of TRS; concludes that section 225 by its terms does not prohibit us from requiring relay services to accommodate enhanced or information services; requires states to notify the Commission about substantive changes in their TRS programs within 60 days of when they occur; adopts the Commission's informal complaint process for TRS complaints; and requires state programs and interstate TRS providers to maintain a log of consumer complaints that allege a violation of the minimum standards and annually report to the FCC the number of complaints received.

**Paperwork Reduction Act of 1995**

7. As required by the Paperwork Reduction of 1995, the NPRM invited the general public and the Office of Management and Budget (OMB) to comment on the proposed information collection requirements contained in the NPRM. The changes to our information collection requirements on which we sought comment in the NPRM included the requirement that, except during network failure, TRS shall answer 85% of all calls by a CA prepared to place the TRS call, within 10 seconds of the time the incoming call reaches the TRS provider's network, and no more than 30 seconds shall elapse between receipt of dialing information and the dialing of the requested number. This calculation is required to be performed daily.

8. OMB's comment on this requirement urges us to explore the use of alternative means, including statistical sampling or periodic performance monitoring, to ensure that the ten second answering portion of the requirement is met, rather than require TRS operators to calculate response times as set forth in 47 CFR 64.604(b)(2). Because of the nature of the requirement that the calculation measures, we feel that statistical sampling or periodic performance monitoring will be inappropriate and inadequate. This

requirement has been misinterpreted and misapplied by some TRS providers and our modification seeks to decrease the likelihood that the misinterpretation continues. We note that the speed-of-answer requirement is an existing rule and that, in this Report and Order, we simply modify that rule to further minimize delays in placing TRS calls. The new rule now forecloses the possibility that the TRS call will be placed in a distribution queue for a long period of time by requiring that a TRS call be handled immediately, whether by CA or an automated process.

9. In addition, OMB states that we must demonstrate that calculating the speed-of-answer on a daily basis has some practical utility to justify the burden it imposes. As set forth in this Report and Order, our main goal is to make the TRS calling experience functionally equivalent to the experience of voice callers. By modifying our speed-of-answer requirement to result in the TRS call being placed more quickly, we feel we meet that goal. As the Report and Order explains, reaching a CA ready to place the relay call is equivalent to getting a dial tone when picking up the phone. Thus, this portion of the call is the first crucial step to making the TRS calling experience functionally equivalent to placing a voice call and should be demonstrated daily.

**Final Regulatory Flexibility Analysis**

10. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM in this docket. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, 5 U.S.C. 604.

*A. Need for, and Objectives of, the Proposed Rules*

1. This rulemaking proceeding was initiated in order to improve the level and quality of service provided through TRS for the benefit of the community of TRS users. The Commission's goal was to improve the overall effectiveness of the TRS program, and to improve the Commission's oversight of certified state TRS programs and its ability to compel compliance with the federal mandatory minimum standards for TRS.

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

12. None.

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

13. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. 5 U.S.C. 601(3). A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632 (1996). The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). Telecommunications Industry Revenue, Figure 2.

14. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services (TRS). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. Small Business Act, 15 U.S.C. 632 (1996). The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813. According to our most recent data, there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected by the final rules.

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

15. *Reporting and Recordkeeping:* This Report and Order involves several reporting requirements. First, it requires that certified states notify the Commission of substantive changes in their state TRS program within 60 days of the effective date of the change. Second, states are required to file documentation demonstrating that the state TRS program remains in compliance with the Commission's mandatory minimum standards following the substantive change. Third, the Report and Order requires TRS administrators to submit the name and address of a contact person or office for filing consumer complaints about intrastate TRS service to the Commission by June 30, 2000. Finally, on an annual basis, beginning May 1, 2001, and upon the Commission's request, states are required to file a copy of their TRS complaint logs.

16. *Other Compliance Requirements:* The rules adopted in this Report and Order require that all common carriers providing voice transmission services must ensure that STS services are available to callers with speech disabilities throughout their service areas within one year of the publication in the **Federal Register** of this *Report and Order*. These rules will affect certified states. The rules also require that TRS calls be answered more promptly, that a minimum typing speed be implemented, and that communications assistants stay with a TTY TRS call for a minimum of ten minutes. These rules will affect TRS providers.

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

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities: (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. The proposals in the NPRM, and the comments the

Commission sought regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principal shaping our final conclusions is Congress' direction that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. Large interexchange carriers and incumbent local exchange carriers provide the majority of TRS service, and we believe that the number of small entities impacted by our conclusions would be potentially very small. With respect to the amendments to the Commission's rules governing TRS, by statute, common carriers providing voice transmission services who are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through a competitively selected vendor, or in concert with other carriers. For these reasons, we conclude that the rule amendments will have a minimal impact on small entities.

18. *Report to Congress:* The Commission will send a copy of this *Report and Order,* including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801 (a)(1)(A). In addition, the Commission will send a copy of this *Report and Order,* including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order,* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

**Ordering Clauses**

19. Accordingly, pursuant to authority found in sections 1, 4(i) and 4(j), 201–205, 218 and 225 of the Communications Act as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218 and 225, part 64 of the Commission's rules are amended.

20. The amendments to sections 64.601 through 64.605 of the Commission's rules (other than the amendments to sections 64.604(c)(2) and 64.604(c)(7)), effective 180 days from the date of publication in the **Federal Register**. The amendments to section 64.604(c)(2) of the Commission's rules shall be effective June 30, 2000. The amendments to section 64.604(c)(7) of the Commission's rules shall be effective 30 days from the date of publication in the **Federal Register.** The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and/or recordkeeping requirements or burdens on the public. Implementation of these new reporting and/or recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMD) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

21. The Commission's Consumer Information Bureau, Reference Information Center, *Shall Send* a copy of this Report and Order, including the Final Regulatory Flexibility Analyses, to the Chief Counsel for Advocacy of Small Business Administration.

**List of Subjects in 47 CFR Part 64**

Communications common carriers, disabilities, telephone, telecommunications relay service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For reasons discussed in the preamble, the Federal Communications Commission amends part 64 of title 47 of the Code of Federal Regulations as follows:

## PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

**Authority:** 47 U.S.C. 151, 154, 201, 202, 205, 218–220, and 332 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended, 47 U.S.C. 2201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Revise § 64.601 to read as follows:

**§ 64.601 Definitions.**

As used in this subpart, the following definitions apply:

1. *American Sign Language (ASL).* A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(2) *ASCII.* An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(3) *Baudot.* A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(4) *Common carrier or carrier.* Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(5) *Communications assistant (CA).* A person who transliterates or interprets conversation between two end users of TRS. CA supersedes the term ''TDD operator.''

(6) *Hearing carry over (HCO).* A reduced form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation.

(7) *Telecommunications relay services (TRS).* Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms ''dual party relay system,'' ''message relay services,'' and ''TDD Relay.''

(8) *Text telephone (TTY).* A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term ''TDD'' or ''telecommunications device for the deaf,'' and TT.

(9) *Voice carry over (VCO).* A reduced form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation.

(10) *Speech-to-speech relay service (STS).* A telecommunications relay service that allows people with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with disabilities and can repeat the words spoken by that person.

(11) *Video relay service (VRS).* A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to

communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.

(12) *Non-English language relay service.* A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(13) *Qualified interpreter.* An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

3. Revise § 64.602 to read as follows:

**§ 64.602 Jurisdiction.**

Any violation of this subpart F by any common carrier engaged in intrastate communication shall be subject to the same remedies, penalties, and procedures as are applicable to a violation of the Act by a common carrier engaged in interstate communication.

4. Revise § 64.603 to read as follows:

**§ 64.603 Provision of services.**

Each common carrier providing telephone voice transmission services shall provide, not later than July 26, 1993, in compliance with the regulations prescribed herein, throughout the area in which it offers services, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers. Speech-to-speech relay service and interstate Spanish language relay service shall be provided by March 1, 2001. A common carrier shall be considered to be in compliance with these regulations:

(a) With respect to intrastate telecommunications relay services in any state that does not have a certified program under § 64.605 and with respect to interstate telecommunications relay services, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with § 64.604; or

(b) With respect to intrastate telecommunications relay services in any state that has a certified program under § 64.605 for such state, if such common carrier (or other entity through which the carrier is providing such relay services) is in compliance with the program certified under § 64.605 for such state.

5. Revise § 64.604 to read as follows:

**§ 64.604 Mandatory minimum standards.**

The standards in this section are applicable December 18, 2000, except as stated in paragraphs (c)(2) and (c)(7) of this section.

(a) *Operational standards*—(1) *Communications assistant (CA).* TRS providers are responsible for requiring that CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities; and that CAs have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications. CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed. TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A ''qualified interpreter'' is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

2. *Confidentiality and conversation content.* (i) Except as authorized by section 705 of the Communications Act, 47 U.S.C. 605, CAs are prohibited from disclosing the content of any relayed conversation regardless of content, and with a limited exception for STS CAs, from keeping records of the content of any conversation beyond the duration of a call, even if to do so would be inconsistent with state or local law. STS CAs may retain information from a particular call in order to facilitate the completion of consecutive calls, at the request of the user. The caller may request the STS CA to retain such information, or the CA may ask the caller if he wants the CA to repeat the same information during subsequent calls. The CA may retain the information only for as long as it takes to complete the subsequent calls.

(ii) CAs are prohibited from intentionally altering a relayed conversation and, to the extent that it is not inconsistent with federal, state or local law regarding use of telephone company facilities for illegal purposes, must relay all conversation verbatim unless the relay user specifically requests summarization, or if the user requests interpretation of an ASL call. An STS CA may facilitate the call of an STS user with a speech disability so long as the CA does not interfere with the independence of the user, the user maintains control of the conversation, and the user does not object. Appropriate measures must be taken by relay providers to ensure that confidentiality of VRS users is maintained.

(3) *Types of calls.* Consistent with the obligations of common carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services. TRS shall be capable of handling any type of call normally provided by common carriers and the burden of proving the infeasibility of handling any type of call will be placed on the carriers. Providers of TRS are permitted to decline to complete a call because credit authorization is denied.

(4) *Handling of emergency calls.* Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to the nearest Public Safety Answering Point (PSAP). In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services.

(5) *In-call replacement of CAs.* CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(6) *CA gender preferences.* TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(7) *STS called numbers.* Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards*—(1) *ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* TRS shall include adequate staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. TRS shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time

the call is delivered to the TRS center's network. The call is considered delivered when the relay center's equipment accepts the call from the local exchange carrier and the public switched network actually delivers the call to the TRS center. Abandoned calls shall be included in the speed-of-answer calculation. A provider's compliance with this rule shall be measured on a daily basis. The system shall be designed to a P.01 standard. A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the relay center to relay administrators and relay centers upon request.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* TRS shall operate every day, 24 hours a day. TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use. TRS shall transmit conversations between TTY and voice callers in real time. Adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. Relay services that are not mandated by this Commission are not required to be provided every day, 24 hours a day.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. VCO and HCO technology are required to be standard features of TRS.

(6) *Voice mail and interactive menus.* CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls which must be made by the relay user in order to complete calls involving recorded or interactive messages. Relay services shall be capable of handling pay-per-call calls.

(c) *Functional standards*—(1) *Consumer complaint logs.*

(i) States and interstate providers must maintain a log of consumer complaints including all complaints about TRS in the state, whether filed with the TRS provider or the State, and must retain the log until the next application for certification is granted. The log shall include, at a minimum, the date the complaint was filed, the nature of the complaint, the date of resolution, and an explanation of the resolution.

(ii) Beginning July 1, 2002, states and TRS providers shall submit summaries of logs indicating the number of complaints received for the 12-month period ending May 31 to the Commission by July 1 of each year. Summaries of logs submitted to the Commission on July 1, 2001 shall indicate the number of complaints received from the date of OMB approval through May 31, 2001.

(2) *Contact persons*—(i) Beginning on June 30, 2000, states must submit to the Commission a contact person or office for TRS consumer information and complaints about intrastate TRS. This submission must include, at a minimum, the name and address of the state office that receives complaints, grievances, inquiries and suggestions, voice and TTY telephone numbers, fax number, e-mail address, and physical address to which correspondence should be sent.

(ii) Beginning on June 30, 2000, providers of interstate TRS and relay providers having state TRS contracts must submit to the Commission a contact person or office for TRS consumer information and complaints about the provider's service. This submission must include, at a minimum, the name and address of the office that receives complaints, grievances, inquiries and suggestions, voice and TTY telephone numbers, fax number, e-mail address, and physical address to which correspondence should be sent.

(3) *Public access to information.* Carriers, through publication in their directories, periodic billing inserts, placement of TRS instructions in telephone directories, through directory assistance services, and incorporation of TTY numbers in telephone directories, shall assure that callers in their service areas are aware of the availability and use of all forms of TRS. Efforts to educate the public about TRS should extend to all segments of the public, including individuals who are hard of hearing, speech disabled, and senior citizens as well as members of the general population.

(4) *Rates.* TRS users shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from the point of origination to the point of termination.

(5) *Jurisdictional separation of costs*—(i) *General.* Where appropriate, costs of providing TRS shall be separated in accordance with the jurisdictional separation procedures and standards set forth in the Commission's regulations adopted pursuant to section 410 of the Communications Act of 1934, as amended.

(ii) *Cost recovery.* Costs caused by interstate TRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism. Except as noted in this paragraph, with respect to VRS, costs caused by intrastate TRS shall be recovered from the intrastate jurisdiction. In a state that has a certified program under § 64.605, the state agency providing TRS shall, through the state's regulatory agency, permit a common carrier to recover costs incurred in providing TRS by a method consistent with the requirements of this section. Costs caused by the provision of interstate and intrastate VRS shall be recovered from all subscribers for every interstate service, utilizing a shared-funding cost recovery mechanism.

(iii) *Telecommunications Relay Services Fund.* Effective July 26, 1993, an Interstate Cost Recovery Plan, hereinafter referred to as the TRS Fund, shall be administered by an entity selected by the Commission (administrator). The initial administrator, for an interim period, will be the National Exchange Carrier Association, Inc.

(A) *Contributions.* Every carrier providing interstate telecommunications services shall contribute to the TRS Fund on the basis of interstate end-user telecommunications revenues as described herein. Contributions shall be made by all carriers who provide interstate services, including, but not limited to, cellular telephone and paging, mobile radio, operator services, personal communications service (PCS), access (including subscriber line charges), alternative access and special access, packet-switched, WATS, 800, 900, message telephone service (MTS), private line, telex, telegraph, video, satellite, intraLATA, international and resale services.

(B) *Contribution computations.* Contributors' contribution to the TRS fund shall be the product of their

subject revenues for the prior calendar year and a contribution factor determined annually by the Commission. The contribution factor shall be based on the ratio between expected TRS Fund expenses to interstate end-user telecommunications revenues. In the event that contributions exceed TRS payments and administrative costs, the contribution factor for the following year will be adjusted by an appropriate amount, taking into consideration projected cost and usage changes. In the event that contributions are inadequate, the fund administrator may request authority from the Commission to borrow funds commercially, with such debt secured by future years' contributions. Each subject carrier must contribute at least $25 per year. Carriers whose annual contributions total less than $1,200 must pay the entire contribution at the beginning of the contribution period. Service providers whose contributions total $1,200 or more may divide their contributions into equal monthly payments. Carriers shall complete and submit, and contributions shall be based on, a ''Telecommunications Reporting Worksheet'' (as published by the Commission in the **Federal Register**). The worksheet shall be certified to by an officer of the contributor, and subject to verification by the Commission or the administrator at the discretion of the Commission. Contributors' statements in the worksheet shall be subject to the provisions of section 220 of the Communications Act of 1934, as amended. The fund administrator may bill contributors a separate assessment for reasonable administrative expenses and interest resulting from improper filing or overdue contributions. The Chief of the Common Carrier Bureau may waive, reduce, modify or eliminate contributor reporting requirements that prove unnecessary and require additional reporting requirements that the Bureau deems necessary to the sound and efficient administration of the TRS Fund.

(C) *Data collection from TRS Providers.* TRS providers shall provide the administrator with true and adequate data necessary to determine TRS fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total TRS operating expenses and total TRS investment in general accordance with part 32 of the Communications Act, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. The administrator and the Commission shall have the authority to examine, verify and audit data received from TRS providers as necessary to assure the accuracy and integrity of fund payments.

(D) The TRS Fund will be subject to a yearly audit performed by an independent certified accounting firm or the Commission, or both.

(E) *Payments to TRS Providers.* TRS Fund payments shall be distributed to TRS providers based on formulas approved or modified by the Commission. The administrator shall file schedules of payment formulas with the Commission. Such formulas shall be designed to compensate TRS providers for reasonable costs of providing interstate TRS, and shall be subject to Commission approval. Such formulas shall be based on total monthly interstate TRS minutes of use. TRS minutes of use for purposes of interstate cost recovery under the TRS Fund are defined as the minutes of use for completed interstate TRS calls placed through the TRS center beginning after call set-up and concluding after the last message call unit. In addition to the data required under paragraph (c)(5)(iii)(C) of this section, all TRS providers, including providers who are not interexchange carriers, local exchange carriers, or certified state relay providers, must submit reports of interstate TRS minutes of use to the administrator in order to receive payments. The administrator shall establish procedures to verify payment claims, and may suspend or delay payments to a TRS provider if the TRS provider fails to provide adequate verification of payment upon reasonable request, or if directed by the Commission to do so. The TRS Fund administrator shall make payments only to eligible TRS providers operating pursuant to the mandatory minimum standards as required in § 64.604, and after disbursements to the administrator for reasonable expenses incurred by it in connection with TRS Fund administration. TRS providers receiving payments shall file a form prescribed by the administrator. The administrator shall fashion a form that is consistent with parts 32 and 36 procedures reasonably tailored to meet the needs of TRS providers. The Commission shall have authority to audit providers and have access to all data, including carrier specific data, collected by the fund administrator. The fund administrator shall have authority to audit TRS providers reporting data to the administrator. The formulas should appropriately compensate interstate providers for the provision of VRS, whether intrastate or interstate.

(F) TRS providers eligible for receiving payments from the TRS Fund are:

(*1*) TRS facilities operated under contract with and/or by certified state TRS programs pursuant to § 64.605; or

(*2*) TRS facilities owned by or operated under contract with a common carrier providing interstate services operated pursuant to § 64.604; or

(*3*) Interstate common carriers offering TRS pursuant to § 64.604.

(G) Any eligible TRS provider as defined in paragraph (c)(5)(iii)(F) of this section shall notify the administrator of its intent to participate in the TRS Fund thirty (30) days prior to submitting reports of TRS interstate minutes of use in order to receive payment settlements for interstate TRS, and failure to file may exclude the TRS provider from eligibility for the year.

(H) *Administrator reporting, monitoring, and filing requirements.* The administrator shall perform all filing and reporting functions required under paragraphs (c)(5)(iii)(A) through (J) of this section. TRS payment formulas and revenue requirements shall be filed with the Commission on May 1 of each year, to be effective for a one-year period beginning the following July 1. The administrator shall report annually to the Commission an itemization of monthly administrative costs which shall consist of all expenses, receipts, and payments associated with the administration of TRS Fund. The administrator is required to keep the TRS Fund separate from all other funds administered by the administrator, shall file a cost allocation manual (CAM), and shall provide the Commission full access to all data collected pursuant to the administration of the TRS Fund. The administrator shall establish a non-paid, voluntary advisory committee of persons from the hearing and speech disability community, TRS users (voice and text telephone), interstate service providers, state representatives, and TRS providers, which will meet at reasonable intervals (at least semi-annually) in order to monitor TRS cost recovery matters. Each group shall select its own representative to the committee. The administrator's annual report shall include a discussion of advisory committee deliberations.

(I) *Information filed with the administrator.* The administrator shall keep all data obtained from contributors and TRS providers confidential and shall not disclose such data in company-specific form unless directed to do so by the Commission. Subject to

any restrictions imposed by the Chief of the Common Carrier Bureau, the TRS Fund administrator may share data obtained from carriers with the administrators of the universal support mechanisms (*See* 47 CFR 54.701 of this chapter), the North American Numbering Plan administration cost recovery (*See* 47 CFR 52.16 of this chapter), and the long-term local number portability cost recovery (*See* 47 CFR 52.32 of this chapter). The TRS Fund administrator shall keep confidential all data obtained from other administrators. The administrator shall not use such data except for purposes of administering the TRS Fund, calculating the regulatory fees of interstate common carriers, and aggregating such fee payments for submission to the Commission. The Commission shall have access to all data reported to the administrator, and authority to audit TRS providers. Contributors may make requests for Commission nondisclosure of company-specific revenue information under § 0.459 of this chapter by so indicating on the Telecommunications Reporting Worksheet at the time that the subject data are submitted. The Commission shall make all decisions regarding nondisclosure of company-specific information.

(J) The administrator's performance and this plan shall be reviewed by the Commission after two years.

(K) All parties providing services or contributions or receiving payments under this section are subject to the enforcement provisions specified in the Communications Act, the Americans with Disabilities Act, and the Commission's rules.

(6) *Complaints*—(i) *Referral of complaint.* If a complaint to the Commission alleges a violation of this subpart with respect to intrastate TRS within a state and certification of the program of such state under § 64.605 is in effect, the Commission shall refer such complaint to such state expeditiously.

(ii) Intrastate complaints shall be resolved by the state within 180 days after the complaint is first filed with a state entity, regardless of whether it is filed with the state relay administrator, a state PUC, the relay provider, or with any other state entity.

(iii) *Jurisdiction of Commission.* After referring a complaint to a state entity under paragraph (c)(6)(i) of this section, or if a complaint is filed directly with a state entity, the Commission shall exercise jurisdiction over such complaint only if:

(A) Final action under such state program has not been taken within:

(*1*) 180 days after the complaint is filed with such state entity; or

(*2*) A shorter period as prescribed by the regulations of such state; or

(B) The Commission determines that such state program is no longer qualified for certification under § 64.605.

(iv) The Commission shall resolve within 180 days after the complaint is filed with the Commission any interstate TRS complaint alleging a violation of section 225 of the Act or any complaint involving intrastate relay services in states without a certified program. The Commission shall resolve intrastate complaints over which it exercises jurisdiction under paragraph (c)(6)(iii) of this section within 180 days.

(v) *Complaint Procedures.* Complaints against TRS providers for alleged violations of this subpart may be either informal or formal.

(A) *Informal Complaints.*

(*1*) Form. An informal complaint may be transmitted to the Consumer Information Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

(*2*) Content. An informal complaint shall include the name and address of the complainant; the name and address of the TRS provider against whom the complaint is made; a statement of facts supporting the complainant's allegation that the TRS provided it has violated or is violating section 225 of the Act and/or requirements under the Commission's rules; the specific relief or satisfaction sought by the complainant; and the complainant's preferred format or method of response to the complaint by the Commission and the defendant TRS provider (such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate the complainant's hearing or speech disability).

(*3*) Service; designation of agents. The Commission shall promptly forward any complaint meeting the requirements of this subsection to the TRS provider named in the complaint. Such TRS provider shall be called upon to satisfy or answer the complaint within the time specified by the Commission. Every TRS provider shall file with the Commission a statement designating an agent or agents whose principal responsibility will be to receive all complaints, inquiries, orders, decisions, and notices and other pronouncements forwarded by the Commission. Such designation shall include a name or department designation, business address, telephone number (voice and TTY), facsimile number and, if available, internet e-mail address.

(B) *Review and disposition of informal complaints.* (*1*) Where it appears from the TRS provider's answer, or from other communications with the parties, that an informal complaint has been satisfied, the Commission may, in its discretion, consider the matter closed without response to the complainant or defendant. In all other cases, the Commission shall inform the parties of its review and disposition of a complaint filed under this subpart. Where practicable, this information shall be transmitted to the complainant and defendant in the manner requested by the complainant (*e.g.,* letter, facsmile transmission, telephone (voice/TRS/TTY) or Internet e-mail.

(*2*) A complainant unsatisfied with the defendant's response to the informal complaint and the staff's decision to terminate action on the informal complaint may file a formal complaint with the Commission pursuant to paragraph (c)(6)(v)(C) of this section.

(C) *Formal complaints.* A formal complaint shall be in writing, addressed to the Federal Communications Commission, Enforcement Bureau, Telecommunications Consumer Division, Washington, DC 20554 and shall contain:

(*1*) The name and address of the complainant,

(*2*) The name and address of the defendant against whom the complaint is made,

(*3*) A complete statement of the facts, including supporting data, where available, showing that such defendant did or omitted to do anything in contravention of this subpart, and

(*4*) The relief sought.

(D) *Amended complaints.* An amended complaint setting forth transactions, occurrences or events which have happened since the filing of the original complaint and which relate to the original cause of action may be filed with the Commission.

(E) *Number of copies.* An original and two copies of all pleadings shall be filed.

(F) *Service.* (*1*) Except where a complaint is referred to a state pursuant to § 64.604(c)(6)(i), or where a complaint is filed directly with a state entity, the Commission will serve on the named party a copy of any complaint or amended complaint filed with it, together with a notice of the filing of the complaint. Such notice shall call upon the defendant to satisfy or answer the

complaint in writing within the time specified in said notice of complaint.

(*2*) All subsequent pleadings and briefs shall be served by the filing party on all other parties to the proceeding in accordance with the requirements of § 1.47 of this chapter. Proof of such service shall also be made in accordance with the requirements of said section.

(G) *Answers to complaints and amended complaints.* Any party upon whom a copy of a complaint or amended complaint is served under this subpart shall serve an answer within the time specified by the Commission in its notice of complaint. The answer shall advise the parties and the Commission fully and completely of the nature of the defense and shall respond specifically to all material allegations of the complaint. In cases involving allegations of harm, the answer shall indicate what action has been taken or is proposed to be taken to stop the occurrence of such harm. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Matters alleged as affirmative defenses shall be separately stated and numbered. Any defendant failing to file and serve an answer within the time and in the manner prescribed may be deemed in default.

(H) *Replies to answers or amended answers.* Within 10 days after service of an answer or an amended answer, a complainant may file and serve a reply which shall be responsive to matters contained in such answer or amended answer and shall not contain new matter. Failure to reply will not be deemed an admission of any allegation contained in such answer or amended answer.

(I) *Defective pleadings.* Any pleading filed in a complaint proceeding that is not in substantial conformity with the requirements of the applicable rules in this subpart may be dismissed.

(7) *Treatment of TRS customer information.* Beginning on July 21, 2000, all future contracts between the TRS administrator and the TRS vendor shall provide for the transfer of TRS customer profile data from the outgoing TRS vendor to the incoming TRS vendor. Such data must be disclosed in usable form at least 60 days prior to the provider's last day of service provision. Such data may not be used for any purpose other than to connect the TRS user with the called parties desired by that TRS user. Such information shall not be sold, distributed, shared or revealed in any other way by the relay center or its employees, unless compelled to do so by lawful order.

6. Revise § 64.605 to read as follows:

**§ 64.605 State certification.**

(a) *State documentation.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Common Carrier Bureau, TRS Certification Program, Washington, DC 20554, and captioned ''TRS State Certification Application.'' All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing any requirements imposed by the state program. The Commission shall give public notice of states filing for certification including notification in the **Federal Register**.

(b) *Requirements for certification.* After review of state documentation, the Commission shall certify, by letter, or order, the state program if the Commission determines that the state certification documentation:

(1) Establishes that the state program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(2) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and

(3) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(c) *Certification period.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in a manner that promote national understanding of TRS and do not offend the public.

(e) *Suspension or revocation of certification.* The Commission may suspend or revoke such certification if, after notice and opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS. The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a state program may not be in compliance with the minimum standards.

(f) *Notification of substantive change.* States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

[FR Doc. 00–15706 Filed 6–20–00; 8:45 am]
**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[I.D. 052500B]**

### Atlantic Highly Migratory Species (HMS) Fisheries; Prohibited Shark Species; Large Coastal Shark Species; Commercial Fishery Closure Change

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

**ACTION:** Implementation of prohibited species provisions; closure change.

**SUMMARY:** NMFS implements the 1999 prohibited species provisions and changes the closure of the large coastal shark (LCS) commercial fishery in the Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea. On June 6, 2000, NMFS announced in the **Federal Register** a closure date of August 7, 2000, for LCS. In a court order by Judge Stephen D. Merryday, the 1999 regulations governing prohibited species provisions may be implemented and enforced, pending further review of the court. Therefore, based on 1997, 1998, and 1999 catch rates and the implementation of the prohibited species provisions, NMFS has determined that the second semiannual adjusted quota for LCS will be reached on or before August 15, 2000.

**DATES:** This action is effective July 1, 2000. The closure for the commercial LCS fishery is changed to August 15, 2000, at 11:30 p.m., local time, and will be in effect through December 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze-Haugen or Karyl Brewster-Geisz, 301–713–2347; fax 301–713–1917.

**SUPPLEMENTARY INFORMATION:** The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

On June 30, 1999, NMFS received a Court Order from Judge Steven D. Merryday relative to the May 1997 lawsuit challenging commercial harvest quotas for Atlantic sharks. Specifically, the order states: ''* * * the Court hereby preliminarily, and until further order of the Court, expressly ENJOINS the defendant and his designees from enforcing the 1999 regulations, 64 Fed. Reg. 29090 (May, 28, 1999) with respect to Atlantic shark commercial catch quotas and fish-counting methods (including the counting of dead discards and state commercial landings after federal closures) that are different from the quotas and fish counting methods prescribed by the 1997 Atlantic shark regulations, 62 Fed. Reg. 16648 (April 7, 1997).'' Therefore, effective July 9, 1999 (July 14, 1999, 64 FR 37883), NMFS reverted the LCS quota to its 1997 level of 1,285 metric tons dressed weight (all species of LCS included), with no minimum size on ridgeback LCS; reverted the pelagic and small coastal shark quotas to their 1997 levels; and applied the 1997 prohibited species list to commercial fisheries (i.e., did not apply the 1999 prohibited species list to commercial fisheries). The limited access provisions, including trip limits for directed and incidental shark permit holders, and all recreational shark provisions (including the 1999 prohibited species provisions) were implemented.

On May 19, 2000, the parties filed a joint motion requesting clarification of the June 30, 1999, order relative to the implementation and enforcement of the prohibited species provisions contained in the final rule (May 28, 1999, 64 FR 29090) of the HMS FMP.

On June 12, 2000, NMFS received a Court Order from Judge Steven D. Merryday relative to the joint motion stating: ''Upon consideration, the motion (Doc. 142) is **GRANTED**. Pending further review, the defendant may proceed with implementation and enforcement of the prohibited species provisions in 64 Fed. Reg. 29090 (May 28, 1999).''

Therefore, effective July 1, 2000, the 1999 prohibited species provisions, including species designations (see Table 1 of Appendix A to 50 CFR part 635 for a list of prohibited species) and prohibitions on possession are effective and will be enforced. Effective July 1, 2000, the following species are prohibited: white, whale, basking, sand tiger, bigeye sand tiger, dusky, bignose, Galapagos, night, Caribbean reef, narrowtooth, Caribbean sharpnose, smalltail, Atlantic angel, longfin mako, bigeye thresher, sevengill, sixgill, bigeye sixgill.

Pursuant to 50 CFR 635.71(d)(10), it is prohibited to retain, possess, sell, or purchase a prohibited shark. All sharks not retained must be released in a manner that will ensure maximum probability of survival, but without removing the fish from the water.

Due to the implementation of the 1999 prohibited species provisions and, based on catch rate data from the second semiannual fishing seasons from 1997, 1998, and 1999 for LCS species, NMFS has determined that the available LCS quota of 542.5 mt dw will be attained within 46 days. Accordingly, the second semiannual season for LCS in or from the Western North Atlantic Ocean, including the Gulf of Mexico and Caribbean Sea, will close on August 15, 2000, at 11:30 p.m. local time. This closure date is 8 days later than the previously announced closure date of August 7, 2000 (June 6, 2000, 65 FR 35855). NMFS estimates that the available LCS quota will not be harvested as quickly when the prohibited species provisions are implemented because the available quota is unchanged but fewer species can be harvested against that quota.

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a directed or incidental limited access permit under 50 CFR 635.4. After 11:30 p.m. local time August 15, 2000, the sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under 50 CFR 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Commercial fishing for pelagic and small coastal sharks may continue until further notice. When quotas are projected to be reached, NMFS will file notification of closure at the Office of the Federal Register. Those vessels that have not been issued a limited access permit under 50 CFR 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at 50 CFR 635.20(d) and 635.22(c). The recreational fishery is not affected by this action.

## Classification

This action is taken under 50 CFR part 635 and is exempt from review under Executive Order 12866.

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

Dated: June 15, 2000.

**Bruce C. Morehead,**

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

[FR Doc. 00–15663 Filed 6–20–00; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 120
Wednesday, June 21, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 430

**RIN 3206–AI57**

## Managing Senior Executive Performance

**AGENCY:** U.S. Office of Personnel Management.

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

**SUMMARY:** The Office of Personnel Management (OPM) proposes to amend its regulations governing performance appraisal in the Senior Executive Service (SES). The proposed regulations will help agencies hold senior executives accountable by: reinforcing the link between performance management and strategic planning; requiring agencies to use balanced measures in evaluating executive performance; and increasing agency flexibility to tailor performance management systems to their unique mission requirements and organizational climate.

**DATES:** Comments must be submitted on or before August 21, 2000.

**ADDRESSES:** Send or deliver written comments to Joyce Edwards, Director, Office of Executive Resources Management, U.S. Office of Personnel Management, 1900 E Street NW, Room 6484, Washington, DC 20415.

**FOR FURTHER INFORMATION CONTACT:** Anne Kirby, (202) 606–1610, or email to SESmgmt@opm.gov.

**SUPPLEMENTARY INFORMATION:** The 7,000 members of the Senior Executive Service (SES) are dedicated, hard-working public servants. Individually and through the organizations they lead, these senior executives strive to deliver value to Americans.

This results-orientation was central to the original vision for the SES. As envisioned by the Civil Service Reform Act (CSRA) of 1978, SES performance management systems should:

• ''Ensure accountability for honest, economical, and efficient Government;''

• ''Assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them;''

• ''Ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance;''

• ''Recognize exceptional accomplishment.''

The Government Performance and Results Act (GPRA) of 1993 and the National Partnership for Reinventing Government (NPR) validated the CSRA's original vision and challenged Government to shift its focus from internal processes and outputs to results that are aligned with customer expectations.

In the discussions triggered by OPM's 1998 *Draft Framework for Improving the Senior Executive Service*, executives and other stakeholders indicated that our current regulations discourage results-oriented performance management. In addition, stakeholders told us that agency leaders must drive the effort to strengthen their SES performance management systems. Respondents to the 1999 Survey of the Senior Executive Service reinforced these findings:

• Only 72% believe their performance rating represents a fair and accurate picture of their performance;

• Only 48% believe SES bonus determinations are based on merit; and

• 57% do not think poor performing executives are removed from their positions.

Survey findings are available on OPM's website (www.opm.gov/SES).

The proposed SES performance management regulations give agencies flexibility to reinvigorate their SES performance management systems—to focus on results over process. They also reinforce the agencies—responsibility to communicate performance expectations and to use the results of the performance management process as a basis for performance awards and other personnel decisions.

The proposed regulations also require SES performance management systems to balance organizational results with the needs and perspectives of customers and employees. Introduction of the balanced scorecard concept in 1992 by Robert Kaplan and David Norton of the Harvard Business School as well as recent studies by the National Partnership for Reinventing Government and others have shown that both the public and private sectors are increasingly and successfully using balanced measurement to help create high-performing organizations. They indicate that an approach to performance planning, management, and measurement that balances the needs and perspectives of customers, stakeholders, employees, or others with the achievement of the organization's business or operational results is critical to successful improvement efforts.

By institutionalizing the use of balanced measures, the Government acknowledges what its best executives have always known: leading people and building customer coalitions are the foundation of organizational success. In the 1999 SES survey, career executives reported that ''leading people'' and ''building coalitions'' are the most important contributors to executive success now, and they will be even more important in the future.

### Overall Approach

Subpart C is totally revised to organize the material more logically and to use plain language, as directed by the President in June 1998.

The purpose statement is revised to stress:

• Expecting excellence in senior executive performance;

• Holding executives accountable for results;

• Communicating regularly about goals and expectations;

• Appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and

• Making performance the basis for pay, awards, and other personnel decisions.

This emphasis is fundamental to the key changes in the subpart.

The proposals broaden the focus from the annual summary rating aspects of performance appraisal to managing performance on an ongoing basis and shift the emphasis from process to results. The subpart is restructured to establish separate sections on the key components of performance management: planning and communicating, monitoring, appraising,

and rating performance and using performance results.

The proposals pare many of the current regulatory requirements back to the statutory requirements and remove others to give agencies more flexibility to design performance management approaches that better fit their unique and changing mission needs and organizational climate. We have eliminated requirements that are unnecessarily constraining and burdensome to agencies or are process-bound. The changes balance the agencies' desire for maximum flexibility with the need for a corporate approach that safeguards merit principles and contributes to a better, results-oriented Government. This approach is also consistent with OPM's earlier initiative to provide more flexibility in how agencies implement performance management for the general workforce (August 23, 1995 **Federal Register**, 60 FR 43936).

**Key Changes in Current Requirements**

*System requirements* are modified to prescribe a framework for agency systems that identifies key system components, without specifying how these components will be implemented. Within this framework, agencies can design performance management systems to meet their unique mission requirements and organizational climate.

*Minimum appraisal period* is modified to permit agencies to establish minimum appraisal periods that are longer than 120 days. The minimum appraisal period must be at least 90 days, as currently required, provided there is enough information on which to base a rating.

*Performance standards are now called performance requirements* to reflect the term used in statute. Performance requirements will be established for critical elements and any other performance elements that will be used to appraise performance and derive the annual summary rating. The term *noncritical element* is no longer required.

*Appraisal criteria* are amended to require balanced measurement.

*Rating level* requirements are modified to remove the requirement to establish three rating levels for each critical element. The performance of each critical element and any other performance elements must be appraised.

*Summary rating level* requirements are modified to the minimum three summary rating levels prescribed in statute (*i.e.,* fully successful, minimally satisfactory, and unsatisfactory). The current maximum of five levels (*i.e.,* no more than two levels above fully successful) is removed.

*Rating terms* are revised to reflect the statutory requirement for an annual summary rating. There are now only two rating terms: the *initial rating* becomes *initial summary rating* and the *final rating* becomes the *annual summary rating.* References to other types of ratings are removed.

*Method for deriving summary ratings* is modified to remove the current requirement to give critical elements more weight than non-critical elements in determining a summary rating.

**Additional Guidance**

OPM will issue additional guidance in various formats to help agencies implement the changes, including model performance management systems and examples of ways to use the various flexibilities provided under these regulations. This guidance will address how agencies are to obtain OPM approval of revised performance management systems, in accordance with 5 U.S.C. 4312. We will also share information about how public and private sector organizations are using balanced measurement to evaluate senior executive performance.

**Table of Changes**

The following table lists all of the proposed changes to the current regulations. The ''current rule'' column lists the regulations in the current subpart C that are affected by the proposed regulations. The ''proposed rule'' column shows the disposition of the current rules. The third column explains each change.

| Current rule | Proposed rule | Explanation of change |
|---|---|---|
| 430.301(a) | 430.301(a) | Plain language edits. |
| 430.301(b) | 430.301(b) | Revises purpose to emphasize expecting excellence, holding senior executives accountable for results, communicating goals and expectations, factoring balanced measurement into performance appraisal, and making performance the basis for personnel decisions. |
| 430.302(a) | 430.302(a) | Plain language edits. |
| 430.302(b) | 430.302(b) | Plain language edits. |
| 430.303 | 430.303 | Revises definitions as follows:<br>*Annual summary rating* replaces the term summary rating to reflect the statutory terminology and means the overall rating level the appointing authority assigns at the end of the appraisal period after considering PRB recommendations.<br>*Appointing authority* is revised to clarify that this individual must be authorized to make SES appointments.<br>*Appraisal* is replaced with *performance appraisal* and edited for plain language.<br>*Appraisal period* reflects plain language edits.<br>*Appraisal system* is replaced with the term *performance management system* to broaden the focus from the annual appraisal to managing performance on an ongoing basis.<br>*Balanced measures* is added because the regulations require agencies to use balanced measurement to evaluate senior executive performance.<br>*Critical element* is broadened to cover the senior executive's work, which may include more than the duties of the position, and focus on organizational results.<br>*Final rating* is replaced with the term used in statute, *annual summary rating,* and edited for plain language.<br>*Initial rating* is replaced with *initial summary rating* and revised for clarity.<br>*Non-critical elements* is replaced with the broader term, *other performance elements,* which refers to components of an executive's work that are not critical but may be important enough to factor into the executive's appraisal. |

| Current rule | Proposed rule | Explanation of change |
|---|---|---|
| | | *Performance* is broadened from the focus on critical and non-critical elements of the position to the accomplishment of work described in the senior executive's performance plan.<br>*Performance appraisal* is added to replace *appraisal* and edited for plain language.<br>*Performance Appraisal System* is replaced with the term *performance management system,* which refers to a framework of policies and practices for planning, monitoring, developing, evaluating, and rewarding individual and organizational performance and for using performance information as a basis for personnel decisions.<br>*Performance management plan* is deleted.<br>The concepts are covered under *performance management systems.*<br>*Performance plan* is replaced with the term *senior executive performance plan* which is expanded to address work the senior executive is expected to accomplish and the requirements against which performance will be evaluated.<br>*Performance standard* is replaced by the term *performance requirement* used in statute and reflects plain language edits.<br>*Progress review* reflects plain language edits.<br>*Rating of record* is deleted.<br>*Summary rating* is replaced with *annual summary rating.*<br>*Strategic planning initiatives* is added because of new requirements for aligning performance plans with strategic planning. |
| 430.304 | 430.304 | Retitles section as SES Performance Management Systems; edits substantially and restructures it to include the key components of agency systems. Moves other requirements to other sections in the subpart. |
| 430.304(a) | 430.304(a) | Plain language edits. |
| 430.304(b) | 430.305(b) | Moves critical element requirements to Planning and Communicating Performance. Replaces reference to non-critical elements with the broader *other performance elements.* |
| | 430.307(a) | Moves appraisal requirements to Appraising Performance; revises them to reflect deletion of term *non-critical elements.* |
| | 430.308(d) | Moves summary rating requirements to Rating Performance. |
| 430.304(c) | 430.304(b) | Planning performance becomes a key component of performance management systems. |
| | 430.305(a) | Moves requirements for individual senior executive performance plans to Planning and Communicating Performance. |
| 430.304(d)(1) | 430.304(b) | Replaces *performance standards* with the statutory term *performance requirements;* some provisions are included in performance management system requirements. |
| | 430.305 | Moves establishing and communicating critical elements and requirements to Planning and Communicating Performance. |
| | 430.307(a) | Moves annual appraisal requirements to Appraising Performance. |
| 430.304(d)(2) | 430.304(b)(1) | Includes accomplishing organizational objectives in requirements to address organizational performance and to link performance management with GPRA goals and with strategic planning initiatives. |
| | 430.305 | |
| 430.304(e) | 430.305(b) | Revises section to eliminate the requirement to establish three rating levels for each critical element. Replaces *performance standards* with *performance requirements* and moves it to senior executive plan requirements under Planning and Communicating Performance. |
| 430.304(f) | 430.304(c)(3) | Edits derivation method requirements to remove references to noncritical elements and moves it to system requirements. New section incorporates restriction on rating level distribution. |
| 430.304(g) | 430.304(c)(2) | Modifies summary rating level requirements to reflect the statutory requirement for a minimum of three levels. Removes the 5-level maximum and rating level numbers. |
| 430.304(h) | 430.306(c) | Broadens requirement for performance assistance to require agencies to help senior executives improve their performance, not just those who are rated less than fully successful, to reflect the emphasis on overall performance improvement. |
| 430.304(i) | 430.309(c) | Edits requirements for action on less than successful performance ratings and moves them to the new section, Using Performance Results. This section is added to focus on basing personnel decisions on performance. |
| | 430.305 | Adds two new sections on Planning and Communicating Performance and Monitoring Performance, which are key components of performance management systems. Consolidates senior executive plan requirements under Planning and Communicating Performance. |
| | 430.306 | Consolidates progress review and performance improvement requirements under monitoring performance. |
| 430.305 | 430.307 | Retitles heading as Appraising Performance, a key component of personnel management systems. |
| 430.305(a)(1) | 430.304(c)(1) | Moves appraisal period requirements to System Requirements. |
| | 430.307(b) | Moves rating performance on details and temporary assignments to Appraising Performance. Replaces summary rating requirement with requirement to appraise performance and factor appraisal into initial summary rating. |
| 430.305(a)(2) | 430.304(c)(1)(ii) | Edits provisions for terminating the appraisal period and moves them to System Requirements. |

| Current rule | Proposed rule | Explanation of change |
|---|---|---|
| 430.305(a)(3) | 430.304(c)(1)(iii) | Edits restriction on appraisals and ratings during Presidential election periods and moves it to System Requirements. |
| 430.305(b) | 430.304(c)(1)(i) | Revises minimum appraisal period to eliminate the 120-day maximum and moves it to System Requirements. |
| 430.305(c) | 430.307(a)(1) | Revises requirement to require appraisal on critical elements only ‘‘ appraising other elements is optional. |
| 430.305(d)(1) and 430.305(d)(2). | 430.307(b)(1), 430.307(b)(2), and 430.307(b)(3). | Substantially edits requirements for appraising performance on details and temporary assignments. Modifies the current requirement for a rating on critical elements to appraising performance and factoring that appraisal into the initial summary rating. |
| 430.305(e) | 430.306(b) | Edits progress review requirements and moves them to Monitoring Performance. |
| 430.306 | 430.308 | Retitles heading as Rating Performance, a key component of personnel management systems. |
| 430.306(a)(1) | 430.308(a) | Plain language edits. |
| 430.306(a)(2) | 430.308(a) | Plain language edits. |
| 430.306(a)(3) | 430.308(b) | Plain language edits. |
| 430.306(a)(4) | 430.308(b), 430.308(c) | Plain language edits. |
| 430.306(a)(5) | 430.308(b) | Removes specific section; provisions are inherent in higher level review requirements. |
| 430.306(b) | 430.308(b) | Adds requirement that higher level reviewer may not change initial summary rating, but can recommend a different rating to PRB and appointing authority. Plain language edits. |
| | 430.308(c) | Adds new section in Rating Performance on PRB review for clarity. |
| 430.306(c) | 430.308(d) | Changes term *final rating* to *annual summary rating* for consistency with statutory language and edits for plain language. |
| 430.306(d) | 430.304(c)(3) | Includes requirement in derivation methods under System Requirements and edits for plain language. |
| 430.306(e) | 430.308(e) | Includes under new section, extending the rating period; edits for plain language. |
| | 430.308(f) | States statutory language regarding appealability of appraisals and ratings. |
| 430.306(f) | 430.307(b) | Modifies requirement for summary rating on transfer to a written appraisal which the gaining supervisor must factor into the annual summary rating. Plain language edits. |
| 430.306(g) | 430.308(a) 430.308(b) | Deletes section; incorporates requirements for executive notification in relevant sections. |
| | 430.311(c) | Edits documentation maintenance and moves them to Training and Evaluation. |
| 430.307 | 430.310 | Plain language edits. |
| 430.307(a) | 430.310(a)(1) | Plain language edits. |
| 430.307(b) | 430.310(a)(4) | Plain language edits. |
| 430.307(c) | 430.310(a)(2) | Plain language edits. |
| 430.307(d) | 430.310(a)(3) | Deletes reference to OPM authority to waive requirement for career majority on PRBs. Authority is stated in statute. |
| 430.307(e) | 430.310(b)(1) | Plain language edits. |
| 430.307(f) | 430.310(b)(3) | Plain language edits. |
| 430.307(g) | 430.301(b)(2) | Plain language edits. |
| 430.308 | 430.311(a) 430.311(b) | Plain language edits. |
| 430.309(a) | 430.312(b) | Plain language edits. |
| 430.309(b) | 430.312(c) | Plain language edits. |
| 430.310 | 430.312(a) | Moves requirement to section on OPM review of agency systems and edits for plain language. |

**E.O. 12866, Regulatory Review**

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

**Regulatory Flexibility Act**

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

**List of Subjects in 5 CFR Part 430**

Government employees, Performance management.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM proposes to amend 5 CFR Part 430 as follows:

## PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

**Authority:** 5 U.S.C. chapter 43.

2. Subpart C is revised to read as follows:

### Subpart C—Managing Senior Executive Performance

Sec.
430.301 General.
430.302 Coverage.
430.303 Definitions.
430.304 SES performance management systems.
430.305 Planning and communicating performance.
430.306 Monitoring performance.
430.307 Appraising performance.
430.308 Rating performance.
430.309 Using performance results.
430.310 Performance Review Boards (PRBs)
430.311 Training and evaluation.
430.312 OPM review of agency systems.

### Subpart C—Managing Senior Executive Performance

#### § 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for performance management for the Senior

Executive Service (SES), the establishment of SES performance appraisal systems, and appraisal of senior executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.

(b) *Purpose.* The regulations in this subpart require agencies to establish performance management systems that hold senior executives accountable for their individual and organizational performance in order to improve the overall performance of Government by—

(1) Expecting excellence in senior executive performance;

(2) Linking performance management with the results-oriented goals of the Government Performance and Results Act of 1993;

(3) Setting and communicating individual and organizational goals and expectations;

(4) Systematically appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and

(5) Using performance results as a basis for pay, awards, development, retention, removal, and other personnel decisions.

**§ 430.302 Coverage.**

(a) This subpart applies to all senior executives covered by subchapter II of chapter 31 of title 5, United States Code.

(b) This subpart applies to agencies identified in section 3132(a)(1) of title 5, United States Code.

**§ 430.303 Definitions.**

Terms used in this subpart are defined as follows:

*Appointing authority* means the department or agency head, or other official with authority to make appointments in the Senior Executive Service.

*Appraisal period* means the established period of time for which a senior executive's performance will be appraised and rated.

*Balanced measures* means an approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.

*Critical element* means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

*Other performance elements* means components of an executive's work that do not meet the definition of a critical element, but may be important enough to factor into the executive's performance appraisal.

*Performance* means the accomplishment of the work described in the senior executive's performance plan.

*Performance appraisal* means the review and evaluation of a senior executive's performance against performance elements and requirements.

*Performance management system* means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, and this subpart, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

*Performance requirement* means a statement of the performance expected for a critical element.

*Progress review* means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.

*Ratings:*

(1) *Initial summary rating* means an overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.

(2) *Annual summary rating* means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.

*Senior executive performance plan* means the written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements and any other performance elements established for the senior executive.

*Strategic planning initiatives* means agency strategic plans, annual performance plans, organizational workplans, and other related initiatives.

**§ 430.304 SES performance management systems.**

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives.

(b) Performance management systems must provide for:

(1) Planning and communicating performance elements and requirements that are linked with strategic planning initiatives;

(2) Consulting with senior executives on the development of performance elements and requirements;

(3) Monitoring progress in accomplishing elements and requirements;

(4) At least annually, appraising each senior executive's performance against requirements using measures that balance organizational results with customer and employee perspectives; and

(5) Using performance information to adjust pay, reward, reassign, develop, and remove senior executives or make other personnel decisions.

(c) Additional system requirements.

(1) *Appraisal period.* Each agency must establish an official performance appraisal period for which an annual summary rating must be prepared.

(i) There must be a minimum appraisal period of at least 90 days.

(ii) An agency may end the appraisal period any time after the minimum appraisal period is completed, if there is an adequate basis on which to appraise and rate the senior executive's performance.

(iii) An agency may not appraise and rate a career appointee's performance within 120 days after the beginning of a new President's term of office.

(2) *Summary performance levels.* Each performance management system must have at least three summary performance levels: one or more fully successful levels, a minimally satisfactory level, and an unsatisfactory level.

(3) *Method for deriving summary ratings.* Agencies must develop a method for deriving summary ratings from appraisals of performance against performance requirements. The method must ensure that only those employees whose performance exceeds normal expectations are rated at levels above fully successful. An agency may not prescribe a forced distribution of rating levels for senior executives.

**§ 430.305 Planning and communicating performance.**

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period and sets the requirements against which performance will be evaluated. Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them on or before the beginning of the appraisal period.

(b) Performance plan requirements:

(1) *Critical elements.* At a minimum, plans must describe the critical elements of the senior executive's work and any other relevant performance elements. Elements must reflect individual and organizational performance.

(2) *Performance requirements.* At a minimum, plans must describe the level of performance expected for fully successful performance of the executive's work. These are the standards against which the senior executive's performance will be appraised.

(3) *Link with strategic planning initiatives.* Critical elements and performance requirements for each senior executive must be consistent with the goals and performance expectations in the agency's strategic planning initiatives.

**§ 430.306 Monitoring performance.**

(a) Supervisors must monitor each senior executive's performance during the appraisal period and provide feedback to the senior executive on progress in accomplishing the performance elements and requirements described in the performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance.

(b) Supervisors must hold a progress review for each senior executive at least once during the appraisal period. At a minimum, senior executives must be informed about how well they are performing against performance requirements.

**§ 430.307 Appraising performance.**

(a) *Annual appraisals.* Agencies must appraise each senior executive's performance in writing and assign an annual summary rating at the end of the appraisal period.

(1) At a minimum, a senior executive must be appraised on the performance of the critical elements in the performance plan.

(2) Appraisals of senior executive performance must be based on both individual and organizational performance, taking into account such factors as—

(i) Results achieved in accordance with the goals of the Government Performance and Results Act of 1993;

(ii) Customer satisfaction;

(iii) Employee perspectives;

(iv) The effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and

(v) Meeting affirmative action, equal employment opportunity, and diversity goals and complying with the merit system principles set forth under section 2301 of title 5, United States Code.

(b) *Details and job changes.* (1) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior executive's performance appraised in writing, and this appraisal must be factored into the initial summary rating.

(2) When a senior executive changes jobs or transfers to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing before the executive leaves.

(3) The annual summary rating and any subsequent appraisals must be transferred to the gaining agency. The gaining supervisor must consider the rating and appraisals when developing the initial summary rating at the end of the appraisal period.

**§ 430.308 Rating performance.**

(a) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive. The senior executive may respond in writing.

(b) *Higher level review.* The senior executive may ask a higher level official to review the initial summary rating before the rating is given to the Performance Review Board (PRB). The senior executive is entitled to one higher level review, unless the agency provides for more than one review level. The higher level official cannot change the supervisor's initial summary rating, but may recommend a different rating to the PRB and the appointing authority. Copies of the reviewer's findings and recommendations must be given to the senior executive, the supervisor, and the PRB.

(c) *PRB review.* The initial summary rating, the senior executive's response to the initial rating, and the higher level official's comments must be given to the PRB. The PRB must review the rating and comments from the senior executive and the higher level official, and make recommendations to the appointing authority, as provided in § 430.310.

(d) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance, in writing, after considering any PRB recommendations. This rating is the official rating.

(e) *Extending the rating period.* When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. The agency will then prepare the annual summary rating.

(f) *Appeals.* Senior executive performance appraisals and ratings are not appealable.

**§ 430.309 Using performance results.**

(a) Agencies will use the results of performance appraisals and ratings as a basis for adjusting pay, granting awards, and making other personnel decisions. Performance information will also be a factor in assessing a senior executive's continuing development needs.

(b) A career executive whose annual summary rating is at least fully successful may be given a performance award under part 534, subpart D, of this chapter.

(c) An executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, of this chapter.

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the Senior Executive Service; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the Senior Executive Service.

**§ 430.310 Performance Review Boards (PRBs).**

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to include women, minorities, and people with disabilities on PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance award, more than one-half

of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the Federal Register before service begins.

(b) *Functions.* (1) Each PRB must review and evaluate the initial summary rating, the senior executive's response, and the higher level official's comments on the initial summary rating, and conduct any further review needed to make its recommendations.

(2) The PRB must make a written recommendation to the appointing authority about each senior executive's annual summary rating.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals.

**§ 430.311 Training and evaluation.**

(a) To assure that agency performance management systems are effectively implemented, agencies must provide appropriate information and training to supervisors and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed.

(c) Agencies must maintain all performance-related records for no less than 5 years from the date the annual summary rating is issued, as required in § 293.404(b)(1) of this chapter.

**§ 430.312 OPM review of agency systems.**

(a) Agencies must submit proposed SES performance management systems to OPM for approval.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it will direct the agency to take corrective action, and the agency must comply.

[FR Doc. 00–15641 Filed 6–20–00; 8:45 am]

BILLING CODE 6325–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–CE–66–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Cessna Aircraft Company Model 402C Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 99–11–13, which currently requires inspecting (one-time) the forward, aft, and auxiliary wing spars for cracks on certain Cessna Aircraft Company (Cessna) Model 402C airplanes, and repairing any cracks found. AD 99–11–13 also required reporting the results of the inspection to the Federal Aviation Administration (FAA) to provide data to help FAA determine whether the inspection should be repetitive. After re-evaluating the fatigue analysis for the wing spars on the affected airplanes, FAA has determined that spar cap cracking is not an isolated condition and could continue to develop over the life of the affected airplanes. Therefore, the proposed AD would retain the inspection required in AD 99–11–13, and would make the inspection repetitive. The actions specified by the proposed AD are intended to continue to detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane.

**DATES:** The FAA must receive any comments on this rule on or before August 24, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in the proposed AD from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550, facsimile: (316) 942–9008. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eual Conditt, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4128; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites comments on the proposed rule.

You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date specified above, before taking action on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive before and after the closing date for comments in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 99–CE–66–AD.'' We will date stamp and mail the postcard back to you.

### Availability of NPRMs

You may obtain a copy of this NPRM by submitting a written request to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–66–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

### Discussion

*Has FAA taken any action to this point?* The FAA issued AD 99–11–13, Amendment 39–11184 (64 FR 29781, June 3, 1999), in order to detect and

correct cracks in the forward, aft, and auxiliary spars of Cessna Model 402C airplanes. AD 99–11–13 requires that you accomplish the following on the affected airplanes:

—Inspect the forward, aft, and auxiliary wing spars for cracks in accordance with Cessna Service Bulletin MEB99–3, dated May 6, 1999;

—Repair any cracks found required in accordance with an FAA-approved repair scheme; and

—Report the results of the inspection to FAA.

AD 99–11–13 was the result of an accident of one of the affected airplanes where the right-hand wing failed just inboard of the nacelle at Wing Station (WS) 87. Investigation of this accident revealed fatigue cracking of the forward main spar that initiated at the edge of the front spar forward lower spar cap.

*What has happened to necessitate further AD action?* The reason for the reporting requirement of AD 99–11–13 was to provide data to FAA on the extent of cracking in the forward, aft, and auxiliary wing spars on the affected airplanes. After re-evaluating the fatigue analysis for the wing spars on the affected airplanes, FAA has determined that spar cap cracking is not an isolated condition and could continue to develop over the life of the affected airplanes.

**The FAA's Determination and an Explanation of the Provisions of the Proposed AD**

*What has FAA decided?* After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—The inspections required by AD 99–11–13 should be repetitive; and

—AD action should be taken to continue to detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane.

*Is there a modification I can incorporate instead of repetitively inspecting the wing spars?* The FAA has determined that long-term continued operational safety would be better assured by design changes that remove the source of the problem, rather than by repetitive inspections or other special procedures. With this in mind, FAA is working with Cessna in developing a strap installation that would have the capability of carrying airplane ultimate load if the spar cap was fractured. The intent is that this strap could be inspected and that the inspections of this strap would be incorporated into the operator's maintenance program, as a replacement for the repetitive inspections required by this AD.

The FAA may consider additional rulemaking action if this modification is developed and subsequently FAA-approved.

**Cost Impact**

*How many airplanes does this proposed AD impact?* We estimate that the proposed AD would affect 225 airplanes in the U.S. registry.

*What is the cost impact of the proposed initial inspection for the affected airplanes on the U.S. Register?* We estimate that it would take approximately 3 workhours per airplane to accomplish the proposed initial inspection, at an average labor rate of $60 an hour. Based on the figures presented above, the total cost impact of the proposed initial inspection on U.S. operators is estimated to be $40,500, or $180 per airplane.

*What about the cost of repetitive inspections?* The FAA has no method of determining the number of repetitive inspections each owner/operator would incur over the life of each of the affected airplanes so the cost impact is based on the initial inspection.

*What is the difference between the cost impact of this AD and the cost impact of AD 99–11–13?* The cost impact of the proposed AD is the same as is currently required by AD 99–11–13. The only difference between the proposed AD and AD 99–11–13 is the repetitive inspections of each affected airplane owner/operator. As discussed above, FAA has no way of determining the repetitive inspection costs.

**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 proposed rule would 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) 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 has been placed 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 14 CFR part 39 of the Federal Aviation Regulations 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 Airworthiness Directive (AD) 99–11–13, Amendment 39–11184 (64 FR 29781, June 3, 1999), and by adding a new AD to read as follows:

**Cessna Aircraft Company:** Docket No. 99–CE–66–AD; Supersedes AD 99–11–13, Amendment 39–11184.

(a) *What airplanes are affected by this AD?* Any Model 402C airplane, certificated in any category, that has a serial number that falls within one of the following ranges:

(1) 689;
(2) 402C0001 through 402C0125;
(3) 402C0201 through 402C0355;
(4) 402C0401 through 402C0528;
(5) 402C0601 through 402C0653; and
(6) 402C0801 through 402C1020.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct any cracks in the forward, aft, and auxiliary wing spars, which could result in reduced or loss of control of the airplane.

(d) What must I do to address this problem? To address this problem, you must accomplish the following actions:

| Actions | Compliance times | Procedures |
|---|---|---|
| (1) Accomplish both an external and internal inspection of the forward, aft, and auxiliary wing spars for cracks. | (i) Initial Inspection: Upon accumulating 10,000 hours total time-in-service (TIS) on the airplane or within the next 25 hours TIS after June 21, 1999 (the effective date of AD 99–11–13), whichever occurs later.<br>(ii) Repetitive Inspections: Within 110 hours TIS after the last inspection required by this AD or AD 99–11–13, whichever is applicable, and thereafter at intervals not to exceed 110 hours TIS.<br>(iii) The 110-hour TIS interval repetitive inspection time is established to allow this action to be accomplished with regular maintenance. The FAA initially determined that 100-hour TIS intervals would provide the safety intent, but has since determined that the 110-hour TIS intervals would provide the same safety intent while providing a 10-percent time flexibility in scheduling to coincide with regular maintenance. | Accomplish these inspections in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin MEB99–3, dated May 6, 1999. |
| (2) If any crack is found on any forward, aft, or auxiliary wing spar during any inspection required by this AD, accomplish the following:<br>(i) Obtain an FAA-approved repair scheme from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550, facsimile: (316) 942–9008; and<br>(ii) Incorporate this repair scheme. | Prior to further flight after the inspection where the crack is found. | Not Applicable. |

**Note:** The compliance times specified in Cessna Service Bulletin MEB99–3, dated May 6, 1999, are different than those required by this AD. The times in this AD take precedence over those in the service bulletin.

(e) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

(2) Alternative methods of compliance that were approved in accordance with AD 99–11–13 are considered approved as alternative methods of compliance for this AD.

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

(f) *I get information about any already-approved alternative methods of compliance?* You can contact Mr. Eual Conditt, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone: (316) 946–4128; facsimile: (316) 946–4407.

(g) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277; or may examine this document at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(h) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 99–11–13, Amendment 39–11184.

Issued in Kansas City, Missouri, on June 14, 2000.

**Michael K. Dahl,**

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

[FR Doc. 00–15511 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–NM–298–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737, 757, and 767 Series Airplanes

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

**ACTION:** Supplemental notice of proposed rulemaking; reopening of comment period.

**SUMMARY:** This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 737, 757, and 767 series airplanes, that would have required repetitive inspections of certain motor operated hydraulic shutoff valves to detect malfunctioning; and replacement with new valves, if necessary. That proposal also would have required eventual replacement of certain existing valves with new valves, which would have constituted terminating action for the repetitive inspections. That proposal was prompted by reports that the motor switch contacts on certain hydraulic shutoff valves were misaligned, causing subsequent malfunction of those valves. This new action revises the proposed rule by extending a certain compliance

time and revising certain actions. The actions specified by this new proposed AD are intended to prevent failure of the motor operated hydraulic shutoff valves, which could result in leakage of hydraulic fluid to the engine fire zone, reduced ability to retract the landing gear, loss of backup electrical power or other combinations of failures; and consequent reduced controllability of the airplane.

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

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–298–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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2673; fax (425) 227–1181.

**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 98–NM–298–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. 98–NM–298–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737, 757, and 767 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on October 27, 1999 (64 FR 57808). That NPRM would have required repetitive inspections of certain motor operated hydraulic shutoff valves to detect malfunctioning; and replacement with new valves, if necessary. That NPRM also would have required eventual replacement of certain existing valves with new valves, which would have constituted terminating action for the repetitive inspections. That NPRM was prompted by reports that the motor switch contacts on certain hydraulic shutoff valves were misaligned, causing subsequent malfunction of those valves. That condition, if not corrected, could result in failure of the motor operated hydraulic shutoff valves, subsequent leakage of hydraulic fluid to the engine fire zone, reduced ability to retract the landing gear, loss of backup electrical power or other combinations of failures; and consequent reduced controllability of the airplane.

**Comments Received to Previous Proposal**

Due consideration has been given to the comments received in response to the NPRM:

**Request To Revise Inspection Category Described in the Proposed Rule**

Several commenters request that the phrase ''general visual inspection'' be changed to ''operational check.'' One commenter states that it defines a general visual inspection as a static inspection, and the inspections described in the alert service bulletins are dynamic inspections and require verification that certain criteria are met during operation of the valves. Another commenter states that the term ''visual inspection'' is misleading, as the valve failures can be identified only by the operational checks identified in the alert service bulletins; additionally, two commenters state that the bulletins do not describe a general visual inspection and, in fact, contain instructions for detailed operational checks. Yet another commenter suggests the instructions for a general visual inspection be expanded in order to clarify what needs to be inspected.

The FAA concurs with the commenters' requests to change the phrase ''general visual inspection'' to ''operational check.'' The alert service bulletins describe instructions for detailed operational checks of the motor operated shutoff valves; however, there is no general visual inspection specified in the bulletins. Therefore, paragraph (a) of the supplemental NPRM (SNPRM) has been revised to specify accomplishment of an operational check in lieu of a general visual inspection. In addition, 'NOTE 2' of the NRPM, which describes a general visual inspection, has been removed.

**Request for Extension of Compliance Time**

Several commenters request that the FAA extend the proposed compliance time for the replacement of the valves as specified in paragraph (b) of the proposed rule. One commenter states that fleet safety would not be adversely impacted if the compliance time for the proposed terminating action were extended to a proposed four years. The commenter's reasons for this statement are the calculated mean time between valve failures, in combination with an unlikely event that creates the need for only one of the valves to operate; and the operational checks accomplished in the interim. The commenter has been working with the valve supplier and the airlines to create a fleet retrofit program and notes that it does not consider it possible to complete the retrofit of the affected airplanes in less than four years. Another commenter requests a minimum of six years to complete the replacement of all the valves due to the large number of valves involved. Another commenter states that there is concern that the parts suppliers will not be able to supply sufficient ''seed'' units at a turn around time adequate to support a two-year retrofit program. Another commenter contends that the data should be analyzed prior to mandating a valve replacement period and requests that the two-year

mandatory replacement be deleted from the proposal. The commenter remarks that the present six-month repetitive operational check interval will provide an acceptable level of safety until such time as the valves can be retrofitted. Another commenter requests that relief be given to allow for installation (replacement) of the valves past the effective date of the proposed AD, as long as all units on the airplane are inspected at six-month intervals and replaced prior to the proposed compliance time. Yet another commenter states that two years is a short compliance time, considering that a very large number of airplanes (over 2,000) with five or more Circle Seal control valves installed that need to be retrofitted. The commenter doubts that this is a realistic proposal and would like to have an extension of the compliance date, in addition to split compliance times for the valves used in sensitive and non-sensitive applications, which would reduce the number of valves that need to be replaced urgently. The last commenter states that the manufacturer is scheduled to release new service bulletins that detail the replacement of the valves used in sensitive and non-sensitive applications.

The FAA concurs partially with the commenters' requests/suggestions. Following careful consideration of all the comments, the FAA agrees to an extension of the compliance time for replacement of the valves to three years, due to the large number of valves involved, and in order to allow operators to obtain the necessary parts based on supplier ability to produce the parts within that timeframe. However, the FAA has determined that three years is the maximum amount of time allowable for this extension so that it will not adversely affect fleet safety, in that data received from the manufacturer shows that a longer extension could result in the risk of failure of a defective valve through normal operation of opening and closing repeatedly. Due to this risk, the six-month repetitive operational check interval, to ensure the valve is operating and the valve motor has not burned up due to repetitive operation, will provide an acceptable level of safety until such time as the valves can be retrofitted. Therefore, paragraph (b) of the SNPRM has been revised accordingly.

**Request To Delete or Revise Paragraph (b)(2) of the Proposed Rule**

Several commenters request that paragraph (b)(2) of the proposal be either deleted or revised. One commenter states that based on past performance, there is a high probability that installation of the fourth generation Circle Seal valves will not adequately address the identified unsafe condition. The commenter requests that the option to replace the existing valves with new Circle Seal valves, as specified in paragraph (b)(2) of the proposed AD, be deleted. Another commenter states that paragraph (b)(2) should apply only to those valves identified in the alert service bulletins referenced in the proposal. The commenter notes that the words in this paragraph could apply to a valve installed in another location on the airplane where failures do not have a negative impact on safety. Another commenter requests that the requirement to replace the valves be postponed until the problems being experienced with the valves are completely resolved. Yet another commenter would like to have the option of replacing a defective valve with either a Whittaker or a Circle Seal valve, independent of the part number used.

The FAA concurs partially with the commenters' requests. The FAA has reviewed information provided by the manufacturer regarding the failure rate of the valves. Based on this information, the FAA has determined that the valves are not an adequate replacement, in addition to difficulty in the installation and operational testing of the valves, resulting in failure of numerous valves; therefore, paragraph (a)(1) of the SNPRM has been revised to remove all references to replacement with Circle Seal valves, and paragraph (b)(2) of the NPRM has been deleted. However, the replacement of the existing valves with Whittaker valves required by paragraph (b)(1) of the NPRM will remain in the AD, and has been moved to paragraph (b) of the SNPRM.

**Conclusion**

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

**Cost Impact**

There are approximately 3,029 Boeing Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,234 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 2 work hours per airplane to accomplish the proposed operational check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $148,080, or $120 per airplane, per operational check.

There are approximately 802 Boeing Model 757 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 558 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 3 work hours per airplane to accomplish the proposed operational check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $100,440, or $180 per airplane, per operational check.

There are approximately 701 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 280 airplanes of U.S. registry would be affected by this proposed AD, and that it would take approximately 4 work hours per airplane to accomplish the proposed operational check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $67,200, or $240 per airplane, per operational check.

For all airplanes, it would take approximately 5 work hours per valve to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts and hydraulic fluid would cost approximately $4,316 per airplane. Based on these figures, the cost impact of the valve replacements proposed by this AD on U.S. operators is estimated to be $4,616 per airplane, per valve replacement. This proposed AD would require eventual replacement of approximately 5,000 valves.

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:

**Boeing:** Docket 98–NM–298–AD.

*Applicability:* Model 737, 757, and 767 series airplanes, certificated in any category, as listed in the following Boeing Alert Service Bulletins:

—737–29A1073, Revision 2, dated July 1, 1999 (for Model 737 series airplanes);
—757–29A0048, Revision 2, dated July 1, 1999 (for Model 757 series airplanes);
—767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes).

**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 failure of the motor operated hydraulic shutoff valves, which could result in leakage of hydraulic fluid to the engine fire zone, reduced ability to retract the landing gear, loss of backup electrical power or other combinations of failures, and consequent reduced controllability of the airplane, accomplish the following:

**Repetitive Operational Checks/Corrective Action**

(a) Within 6 months after the effective date of this AD: Perform an operational check to detect malfunctioning of any Circle Seal motor operated hydraulic shutoff valve having a part number specified in the ''Existing Part Number'' column (including parts marked with the suffix ''R'' after the serial number), of Paragraph 2.E. of Boeing Alert Service Bulletin 737–29A1073, Revision 2 (for Model 737 series airplanes), or 757–29A0048, Revision 2 (for Model 757 series airplanes), both dated July 1, 1999; or 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes); as applicable; in accordance with the applicable alert service bulletin.

(1) If any malfunction of any valve is detected, prior to further flight, replace the valve with a new Whittaker valve in accordance with the applicable service bulletin. Repeat the operational check thereafter at intervals not to exceed 6 months until accomplishment of the terminating action required by paragraph (b) of this AD on all subject valves.

(2) If no malfunction of any valve is detected, repeat the operational check thereafter at intervals not to exceed 6 months until accomplishment of the terminating action required by paragraph (b) of this AD on all subject valves.

**Terminating Action**

(b) Within 3 years after the effective date of this AD, accomplish the replacement of any Circle Seal valve having a P/N specified in the ''Existing Part Number'' column (including parts marked with the suffix ''R'' after the serial number), of Paragraph 2.E. of Boeing Alert Service Bulletin 737–29A1073, Revision 2 (for Model 737 series airplanes); 757–29A0048, Revision 2 (for Model 757 series airplanes), both dated July 1, 1999; or 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes); with a new Whittaker valve in accordance with the applicable alert service bulletin. Accomplishment of this replacement constitutes terminating action for the repetitive operational checks required by this AD.

**Spares**

(c) As of the effective date of this AD, no person shall install on any airplane, any part identified in the ''Existing Part Number'' column (including parts marked with the suffix ''R'' after the serial number), of Paragraph 2.E. of Boeing Alert Service Bulletin 737–29A1073, Revision 2 (for Model 737 series airplanes); 757–29A0048, Revision 2 (for Model 757 series airplanes), both dated July 1, 1999; or 767–29A0083, Revision 2, dated July 15, 1999 (for Model 767 series airplanes); as applicable.

**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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

Issued in Renton, Washington, on June 15, 2000.

**Donald L. Riggin,**

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

[FR Doc. 00–15661 Filed 6–20–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Part 250

**RIN 1010–AC43**

## Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Oil and Gas Drilling Operations

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule restructures the requirements for oil and gas drilling operations on the Outer Continental Shelf (OCS), adds some new requirements, and converts the rule into plain language. The proposed rule follows the logical sequence of obtaining approval to drill a well and conducting operations. The proposed rule also removes overly prescriptive requirements and updates requirements to reflect changes in drilling technology. Restructuring the drilling requirements will make the regulations easier to read, understand, and follow. The proposed technical changes will help ensure that lessees conduct operations in a safe manner.

**DATES:** MMS will consider all comments we receive by September 19, 2000. We will begin reviewing comments then and may not fully consider comments we receive after September 19, 2000.

**ADDRESSES:** Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817;

Attention: Rules Processing Team (Comments).

Mail or hand-carry comments with respect to the information collection burden of the proposed rule to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–NEW); 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Bill Hauser, Engineering and Operations Division, at (703) 787–1600.

**SUPPLEMENTARY INFORMATION:** This proposed revision of Subpart D, Oil and Gas Drilling Operations, contains several changes from the current regulations. One major change is the organization of the subpart. We have moved the Application for Permit to Drill (APD) section into the front of the subpart, where it becomes the cornerstone of the drilling requirements. The other sections follow in a logical sequence. The last major revision to the drilling regulations occurred on April 1, 1988 (53 FR 10596), when MMS consolidated the OCS Orders and the regulations into a single package. We welcome comments on the order of the sections.

The proposed rule uses several methods to put MMS's drilling requirements in plain language. These methods include:

- Breaking down lengthy sections into multiple sections;
- Using lists in place of lengthy paragraphs;
- Moving and consolidating similar requirements into single sections;
- Using tables where possible (such as casing and cementing requirements);
- Removing overly prescriptive requirements;
- Using ''you'' to refer to the lessee, operator, or person acting on behalf of a lessee; and
- Using questions as section titles.

We encourage your comments on any of these innovations.

The rule also proposes some new requirements. MMS District Supervisors and Drilling Engineers recommended most of the new proposed requirements based on their experience of reviewing and approving Applications for Permit to Drill and other drilling operations. Some of the new requirements will improve the flow of information between the lessee and the Drilling Engineer reviewing a request (such as listing all departures in one place as required in § 250.418(g)) or will fill a gap in the current regulations (such as recordkeeping for casing tests in § 250.428). The following paragraphs identify and briefly discuss the most important proposed revisions. We welcome your comments on these proposed requirements.

**Rig Move Notification (§ 250.404)**

The proposed rule would require the lessee to notify the District Supervisor 24 hours before rig arrival on and departure from the well location. MMS needs to know the comings and goings of drilling rigs to effectively and efficiently schedule inspections of drilling operations. MMS has attached this requirement as a condition of approval to APDs for many years. This would now make this condition of approval part of the regulations.

**New Form To Supplement the APD Information (§ 250.410)**

The proposed rule requires a lessee to use the new form MMS–123–Supplemental APD Information Sheet. The new form provides MMS drilling engineers with a technical summary of the information required in the APD. This aids District offices in the efficient review and approval of APDs. We also believe the successful use of this form helps pave the way for future electronic submissions of APDs.

The Office of Management and Budget has approved the new form, which does not require any new information. For further information about this form, you may contact Bill Hauser or Alexis London with the Rules Processing Team at 703–787–1600.

**Well Location Description (§ 250.412)**

The proposed rule requires the lessee to provide a more precise description of the surface and subsurface locations of the proposed well. The current regulations require lessees to provide the location in feet from the block line, but there has been a longstanding problem for computer routines that convert distances from block lines to x-y and longitude-latitude coordinates for well locations in irregular blocks. The x-y and longitude-latitude coordinates will be more accurate, allow easier data entry, and be more compatible for mapping.

**Requests for Using Alternative Procedures or Departures from the Regulations (§ 250.418(g))**

The proposed rule requires the lessee to list and discuss all requests for using alternative procedures or departures from the regulations in one place within the APD. This will aid District offices in the review and approval of these requests and the APD. The proposed rule requires you to explain how the alternative procedure affords an equal or greater degree of protection, safety, or performance or why you need the departure.

**Waiting on Cement (§ 250.422(b))**

The proposed rule requires that the lessee must determine when it is safe to nipple down (remove) the diverter or blowout preventer (BOP) stack after cementing a casing string. MMS proposes this new requirement because there have been some cases where a blowout occurred after a lessee nippled down the diverter or BOP stack while waiting on cement. We considered setting a specific waiting time or a compressive strength for the cement but decided that the complexity of cementing operations and variety of cements are not good candidates for a prescriptive requirement. The proposed rule makes the lessee responsible for evaluating the factors associated with each cement job to determine when it is safe to nipple down the diverter or BOP stack.

Currently, MMS requires the lessee to hold the cement in newly cemented casing strings under pressure for 8 hours for conductor casing or 12 hours for other casing strings before resuming drilling. It is during these waiting times that the lessees usually nipple down and nipple up (install) the diverter or BOP stack. The proposed rule does not revise or remove these waiting times. These required waiting times help ensure that the cement attains sufficient strength to safely resume drilling. Your comments on this approach to addressing this issue are welcomed.

**Best Cementing Practices**

The current drilling requirements do not address the methods you must use to cement casing strings. MMS has allowed lessees to use their judgment in selecting the proper method of cementing casing and liners. While this approach has worked for the successful drilling and completion of wells, we are less convinced that this approach has been successful for the long-term life of many wells. MMS believes that poor cementing practices are among the main primary causes of sustained casing pressures on producing wells. As a preventive measure to reduce the number of wells with sustained casing pressures, we recommend that lessees use better cementing practices for production wells. This is especially true with subsea wells where it is not possible to monitor most casing pressures. We welcome your comments on the use of improved cementing practices to address some of the problems associated with sustained casing pressures.

**Minimum Cemented Casing Strings for Producing Wells (§ 250.423(f))**

The proposed rule requires that you must have at least two cemented casing strings if you plan to produce the well. This has been an unwritten rule for OCS wells in the Gulf of Mexico Region (GOMR) for many years. MMS believes that two cemented casing strings (not including any cemented liners) are the minimum needed to ensure safe production for the life of the well. This proposed requirement makes this unwritten requirement available for comment.

**Recordkeeping for Casing, Liner, and Diverter Pressure Tests (§§ 250.427 and 250.434)**

The proposed rule clarifies what MMS has expected a lessee to record for casing, liner, and diverter pressure tests. The casing pressure test must be recorded on a pressure chart and certified by your onsite representative as being correct. The time, date, and results are then recorded in the driller's report. Recordkeeping requirements for a diverter test are similar to those required for a BOP test.

**Blind-shear Ram for Surface BOP Systems (§§ 250.441, 250.515(b), and 250.615(b))**

The proposed rule requires a lessee to install a blind-shear ram in the surface BOP stack instead of a blind ram. MMS believes that a blind-shear ram in the surface stack provides an additional safety measure in handling well control events. We recently reviewed the blowouts that have occurred since 1977 and found at least 12 incidents where a blind-shear ram had helped or could have helped control the situation. These blowouts usually occurred when drill pipe or tubing was hung in the BOP stack, and there were difficulties in installing or closing a drill string safety valve, inside the BOP, or tubing safety valve. Several of these blowout events had major casualties and/or damage to platforms and drilling rigs.

MMS believes that the use of blind-shears rams will prevent or minimize some blowouts on the OCS. This would reduce the risk of injury and loss of life to personnel and the risk of environmental damages from a blowout. We believe the benefits from reduced injuries, fatalities, environmental damages, and losses from property damages will easily out weigh the costs of installing the blind-shear rams. This measure is consistent with our Congressional mandate to prevent or minimize the likelihood of blowouts (OCS Lands Act at 43 U.S.C. 1332(6)).

MMS believes that the installation of a blind-shear ram in BOP stacks should also be applied to completion and workover operations because several of the above blowout events involved completions and workovers. The proposed rule does not apply to workovers with the tree in place. The proposed rule also revises § 250.515(b) and § 250.615(b).

The proposed rule provides for a 1-year grace period to comply with the requirement to install a blind-shear ram on surface stacks. Lessees will have 1 year from the effective date of the final rule to install blind-shear rams in all surface BOP stacks.

**Reference Minimum Accumulator Requirements for Subsea BOP Systems (§ 250.442)**

The proposed rule references section 12.3, Accumulator Volumetric Capacity, in the American Petroleum Institute's Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells (API RP 53). We included this reference so that both industry and MMS would have guidelines for determining the minimum requirements and performance for subsea accumulators and BOP systems. Included in this section are minimum accumulator response times for annular and ram preventers. The proposed rule also requires the lessee to record the closing times for subsea annular and ram preventers. These proposed revisions will help ensure that subsea BOP systems operate at proper levels of performance.

**Reference Minimum BOP Maintenance Requirements (§ 250.446)**

The current regulations in § 250.407 require the lessee to maintain BOP equipment to ensure that it operates properly. The proposed rule goes on to require that this maintenance must meet or exceed the provisions of sections 17.10 and 18.10 (Inspections); sections 17.11 and 18.11 (Maintenance); and sections 17.12 and 18.12 (Quality Management), in API RP 53. MMS selected API RP 53 as the standard to use because it represents a composite of the practices used by various operators and drilling contractors.

The importance of a thorough maintenance program is even greater now that MMS has allowed lessees to test BOP equipment less frequently than before (see final rule for BOP testing published June 1, 1998, 63 FR 29604). MMS believes that maintenance is critical to the proper operation of BOP equipment. MMS considered including specific maintenance practices when we revised the BOP testing requirements but decided to limit that rulemaking to the BOP testing issue since the BOP performance study did not specifically address BOP maintenance. This rulemaking would set those minimum requirements.

The proposed rule references only specific sections of API RP 53. We have referenced specific sections because these were the most critical areas of concern. However, several industry commenters on the BOP testing requirements recommended incorporating the entire API RP 53 document. We would like your comments on whether MMS should reference specific sections or incorporate the entire document into the regulations.

**Use of Maximum Anticipated Surface Pressure (MASP) for Determining BOP Test Pressures (§ 250.448)**

As discussed in the preambles of the proposed (July 15, 1997, 62 FR 37819) and final rules for BOP testing requirements, MMS has considered using MASP in determining BOP test pressures. Industry comments on the proposed BOP testing rule showed interest in this approach for determining test pressures, but both industry and MMS expressed concerns about how to calculate MASP. After considerable thought, MMS has decided to propose using MASP calculations in determining BOP test pressures. Under the proposed rule, the high pressure test must either equal the rated working pressure of the equipment, or be 500 pounds per square inch (psi) greater than the calculated MASP for the applicable section of hole, whichever is smaller. This reflects how MMS currently reviews and approves test pressures. It is also consistent with current industry practice of testing BOPs at less than the rated working pressures. The proposed rule also clearly states that the District Supervisor must have approved the MASP plus 500 psi test pressures in the APD.

Currently, District Supervisors base the approval of alternate test pressures on a comparison of the anticipated surface pressure calculations submitted with the APD to MASP calculations made by MMS drilling engineers. If the two calculations compare favorably, the District Supervisor approves the requested test pressures. If the calculations for anticipated surface pressure are less than those calculated by MMS, the District Supervisor advises the lessee of any necessary revisions to the APD.

**Change in Terminology—Mud to Drilling Fluid**

The proposed rule changes the term ''mud'' as in drilling mud to ''drilling fluid.'' We believe that this change more accurately reflects the current terminology. We have changed the term ''mud'' to ''drilling fluid'' throughout subpart D. We will make the same change in other subparts as we revise them.

**Posting Maximum Safe Pressures Contained Under a Shut-In BOP (§ 250.456(f))**

The proposed rule clarifies the current requirement of posting the maximum pressure that you may safely contain under a shut-in BOP for each casing string. The proposed rule requires the posting of two pressures: (1) the surface pressure at which the casing shoe would break down and, (2) the lesser of the BOP's rated working pressure or 70 percent of casing burst pressure (or casing test pressure otherwise approved by the District Supervisor). The current requirement has led to some confusion as to what safe pressure MMS wants posted, i.e., formation fracture pressure or equipment limitation pressure. By having both pressures posted, the driller will have additional information immediately available for decisionmaking.

**Establish Well Testing Requirements (§ 250.460)**

The proposed rule establishes minimum requirements for well-testing activities. Currently there are no regulations that specifically address well testing. MMS believes that minimum requirements are necessary to understand and evaluate the lessee's anticipated well-testing activities. The proposed rule would require a lessee to submit information about testing procedures and equipment to the District Supervisor for approval with the APD or a Sundry Notice. You would not be allowed to conduct the well test until the District Supervisor approves the submitted test information. The information that must be submitted includes estimated flowing and shut-in tubing pressures; estimated flow rates and cumulative volumes; time duration of flow, buildup, and drawdown periods; a description of surface and subsurface test equipment; proposed methods to handle or transport produced fluids; and a full description of the test procedures.

**Simplify Survey Requirements for Directional Drilling (§ 250.461)**

The proposed rule simplifies the language and the requirements to be consistent with current practices and technology. The proposed rule also makes these survey requirements a separate section.

**Hydrogen Sulfide (§ 250.470)**

The hydrogen sulfide section of subpart D was not revised. We are not revising this section now because it was revised in January 1997 (62 FR 3795). MMS will consider revising this section as we begin the rewriting of subpart E, Oil and Gas Well-Completion Operations; subpart F, Oil and Gas Well-Workover Operations; and subpart H, Oil and Gas Production Safety Systems. Your comments on the best method to rewrite or reorganize the hydrogen sulfide requirements are welcomed.

**Requirements Removed From Subpart D**

The proposed rule does not contain requirements for the welding and burning practices and procedures (former § 250.402) or electrical equipment (former § 250.403). These requirements were moved to subpart A of the regulations in the Notice of Final Rulemaking for subpart A, which was published in the **Federal Register** on December 28, 1999 (64 FR 72756).

The proposed rule also removes the detailed well-control drill requirements. These requirements (current § 250.408) prescribe how the lessee is to conduct the drill. MMS proposes to remove these requirements because they are too prescriptive. MMS still would require the lessee to outline the assignments for each member of the drilling crew.

**Other Considerations for Drilling Regulations**

MMS also considered including regulations for drilling with coiled tubing units in this revision of subpart D. However, we decided to postpone proposing requirements for coiled tubing drilling operations until MMS has a better understanding of these operations and the amount of activity that will likely take place on the OCS. MMS would most likely use API's Recommended Practice for Coiled Tubing Operations in Oil and Gas Well Services (API RP 5C7) as a guideline when we do propose appropriate regulations. We would like your comments on the need for regulations for coiled tubing drilling.

MMS is also looking at requiring drilling rigs to use automated pipe handling systems during drilling operations. MMS believes that the use of automated pipe handling systems clearly provides safety advantages over non-automated pipe handling systems. After further consultation with the U.S. Coast Guard, we may propose this new requirement under the provision in § 250.107, which mandates that the Director require the use of the best available and safest technology to protect health, safety, property, and environment. We welcome your comments on requiring automated pipe handling systems as well as your comments on the best approach to implementing this requirement.

**Derivation Table**

The derivation table below shows where the proposed requirements come from in relation to the current sections. The table also provides the section numbers that were used from 1988 up until mid-1998 when MMS assigned new numbers to the sections to aid in the updating and revision of the regulations (63 FR 29478, May 29, 1998).

DERIVATION TABLE

| Proposed new section and title | Current section | Previous numbering system |
|---|---|---|
| 250.400 Who is subject to the requirements of this subpart? | New section | New section. |
| 250.401 What must I do to keep wells under control? | 250.400 | 250.50. |
| 250.402 When and how must I secure a well? | 250.411 | 250.61. |
| 250.403 What safety requirements must my drilling unit meet? | 250.401 | 250.51. |
| 250.404 What mobile drilling unit movements must I report? | New requirement | New requirement. |
| 250.410 How can I apply for a permit to drill a well? | 250.414(a) | 250.64(a). |
| 250.411 What material must I submit with my application? | ?250.414(f) | 250.64(f). |
| 250.412 What requirements must my plat meet? | ?250.414(f)(1) | 250.64(f)(1). |
| 250.413 What items must my description of well drilling design criteria address? | 250.414(f)(2) | 250.64(f)(2). |

DERIVATION TABLE—Continued

| Proposed new section and title | Current section | Previous numbering system |
|---|---|---|
| 250.414 What items must my drilling prognosis include? | 250.414(f)(5) | 250.64(f)(5). |
| 250.415 What items must my casing and cementing programs include? | 250.414(f)(4 and 6) | 250.64(f)(4 and 6). |
| 250.416 What information must be included in the diverter and BOP descriptions? | 250.414(f)(3) | 250.64(f)(3). |
| 250.417 What information must I provide if I intend to use a mobile drilling unit to drill a proposed well? | 250.414(b) | 250.64(b). |
| 250.418 What additional requirements must I meet? | 250.414(f)(11) | 250.64(f)(11). |
| 250.420 What well casing and cementing requirements must I meet? | 250.404(a)(1) | 250.54(a)(1) |
| | 250.404(a)(2) | 250.54(a)(2). |
| 250.421 What are the casing and cementing requirements by type of casing string? | 250.404(b),(c),(d), and (e) | 250.54(b),(c), (d), and (e). |
| 250.422 When may I resume drilling after cementing? | 250.405(d) | 250.55(d). |
| 250.423 How must I remedy cementing and casing problems and situations? | 250.404 and .405 | 250.54 and .55. |
| 250.424 What are the requirements for pressure testing casing? | 250.405 | 250.55. |
| 250.425 What special pressure tests must I perform on casings for prolonged drilling operations? | 250.405 | 250.55. |
| 250.426 What are the requirements for pressure testing liners? | 250.405 | 250.55. |
| 250.427 What are the recordkeeping requirements for casing and liner pressure tests? | 250.405(a) and New requirement | 250.55(a). |
| 250.428 What are the requirements for pressure integrity tests? | 250.404(a)(6) | 250.54(a)(6). |
| 250.430 When must I install a diverter system? | 250.409(a) | 250.59(a). |
| 250.431 What are the diverter design and installation requirements? | 250.409(c) | 250.59(c). |
| 250.432 What must I do to obtain a departure to diverter design and installation requirements? | 250.409(d) | 250.59(d). |
| 250.433 How must I test the diverter system after installation? | 250.409(f) | 250.59(f). |
| 250.434 What are the recordkeeping requirements for diverter tests? | 250.409(f) | 250.59(f). |
| 250.440 What are the general requirements for BOP systems and system components? | 250.406(a) and (b) | 250.56(a) and (b). |
| 250.441 What are the requirements for a surface BOP stack? | 250.406(f) | 250.56(f). |
| 250.442 What are the requirements for a subsea BOP stack? | 250.406(e) | 250.56(e). |
| 250.443 What associated BOP systems and related equipment must my BOP system include? | 250.406(d) | 250.56(d). |
| 250.444 What are the choke manifold requirements? | 250.406(d)(7) | 250.56(d)(7). |
| 250.445 What are the requirements for kelly cocks, inside BOPs, and drill-string safety valves? | 250.406(d)(10) | 250.56(d)(10). |
| 250.446 What must I do to maintain and inspect my BOP? | 250.407(f) and (g) | 250.57(f) and (g). |
| 250.447 When must I conduct BOP system pressure tests? | 250.407(a) | 250.57(a). |
| 250.448 What are the BOP pressure tests requirements? | 250.407(b) and (c) | 250.57(b) and (c). |
| 250.449 Are there additional BOP testing requirements with which I must comply? | 250.407(d) | 250.57(d). |
| 250.450 What are the recordkeeping requirements for BOP tests? | 250.407(h) | 250.57(h). |
| 250.451 How do I remedy BOP problems and situations? | 250.407(c), (d) and (e) | 250.57(c), (d) and (e). |
| 250.455 What are the general requirements for a drilling fluid program? | 250.410(a) | 250.60(a). |
| 250.456 What are the required safe drilling fluid program practices? | 250.410(b) | 250.60(b). |
| 250.457 What equipment must I have to test and monitor drilling fluids? | 250.410(c) | 250.60(c). |
| 250.458 What quantities of drilling fluids are required? | 250.410(d) | 250.60(d). |
| 250.459 What are the safety requirements for drilling fluid-handling areas? | 250.410(e) | 250.60(e). |
| 250.460 What are the requirements for well testing? | 250.401(e)(1) and new requirement for well testing. | 250.51(e)(1). |
| 250.461 What are the requirements for directional and inclination surveys? | 250.401(e)(2),(3), and (4) | 250.51(e)(2),(3), and (4). |
| 250.462 What are the requirements for well-control drills? | 250.408 | 250.58. |
| 250.463 Who establishes field drilling rules? | 250.412 | 250.62. |
| 250.465 When must I submit forms to MMS? | 250.415 | 250.65. |
| 250.466 What well records must I keep? | 250.416(a) | 250.66(a). |
| 250.467 What well records may I be required to submit? | 250.416(c) | 250.66(c). |
| 250.468 How long must I keep drilling-related records? | 250.416(a) and (g) | 250.66(a) and (g). |
| 250.469 Must I submit copies of well logs? | 250.416(d) | 250.66(d). |
| 250.470 Hydrogen sulfide | 250.417 | 250.67. |

**Procedural Matters**

*Public Comments Procedures*

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 rulemaking 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.

*Takings Implication Assessment (Executive Order (E.O.) 12630)*

According to E.O. 12630, the proposed rule does not have significant Takings Implications. A Takings Implication Assessment is not required. The proposed rule revises existing operation regulations. It does not prevent any lessee, operator, or drilling contractor from performing operations on the OCS, provided they follow the regulations. Thus, MMS did not need to prepare a Takings Implication Assessment pursuant to E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

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

This proposed rule is a significant rule under E.O. 12866; therefore, OMB will review the proposed rule.

(1) This proposed rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The major purpose for this proposed rule is the restructuring of the rule and simplifying the regulatory language. The restructuring and plain language revisions will not result in any economic effects to small or large entities. Some of the proposed technical revisions will have a minor economic effect on lessees and drilling contractors. The cost of the rule is affected by the response of existing and future potential regulated entities to anticipated prices and returns in the energy markets. With increases in the prices of oil and natural gas, the amount of drilling activity and affected entities could increase as could the estimated cost of the proposed rule. However, even with such changes, MMS believes the rule will not have an annual effect on the economy of $100 million. Specifically, given the existing industry structure (i.e., the number and size of affected regulated entities remains constant), MMS estimates the first year cost to implement the rule at less than $15 million. Over 95 percent of the estimated cost of the proposed rule is due to the acquisition and installation of the blind-shear rams. The recurring costs in the ensuing years, given no change to the existing structure of the OCS lessees and drilling contractors, are estimated at $1 million annually.

The majority of the cost to implement the proposed rule is due to the required installation of blind-shear rams ($14 million) in a surface BOP stack. The most significant benefits of preventing or minimizing some blowouts will be the reduced risk of injury or fatality to personnel and of environmental damage. Property damages (including lost productivity) resulting from blowouts will also be reduced by this proposed rule. Property and financial damages from a blowout or near blowout can range from minimal damage to a facility and the loss of a day's activity to the total loss of the drilling rig and production facility.

MMS estimates that installation of a blind-shear ram in the BOP stack could prevent or minimize one blowout every 2 years. This estimate comes from the 12 incidents that MMS identified where a blind-shear ram had helped or could have helped prevent or minimize a blowout over a 23+ year period (1977 to present). Considering that a single blowout could cause multiple injuries, fatalities, and tens of millions of dollars in property damage and financial losses, MMS believes that the benefits of this proposed requirement will more than offset the cost of this proposed requirement.

(2) This proposed rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed rule does not affect how lessees or operators interact with other agencies. Nor does this proposed rule affect how MMS will interact with other agencies.

(3) This proposed rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The proposed rule only addresses the regulatory requirements for obtaining permission to drill on the OCS and the safety of drilling operations.

(4) This proposed rule does not raise novel legal or policy issues. The proposed rule involves some new policy issues, such as requiring minimum BOP maintenance requirements and blind-shear rams for surface BOP stacks, but these new policy decisions are not ''novel.'' They simply address recognized gaps in our safety regulations. These minimum requirements are generally accepted practices that are included in API documents.

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

According to E.O. 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order.

*National Environmental Policy Act (NEPA)*

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment is not required.

*Paperwork Reduction Act (PRA) of 1995*

The proposed rule contains a collection of information that has been submitted to OMB for review and approval under § 3507(d) of the PRA. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. Submit your comments to the Office of Information and Regulatory Affairs; OMB; Attention: Desk Officer for the Department of the Interior (OMB control number 1010–NEW); 725 17th Street, NW, Washington, DC 20503. Send a copy of your comments to the Rules Processing Team, Attn: Comments; Mail Stop 4024; Minerals Management Service; 381 Elden Street; Herndon, Virginia 20170–4817. You may obtain a copy of the supporting statement for the new collection of information by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

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. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it by July 21, 2000. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the collection of information for this proposed rule is ''Proposed Rulemaking—30 CFR 250, Subpart D—Oil and Gas Drilling Operations'' (OMB control number 1010–NEW). Respondents include approximately 130 Federal OCS oil and gas or sulphur lessees. The frequency of response is on occasion, daily, weekly, quarterly, or annually depending upon the requirement. Responses to this collection of information are mandatory. MMS will protect proprietary information according to the Freedom of

Information Act and 30 CFR 250.196, ''Data and information to be made available to the public.''

The collection of information required by the current subpart D regulations is approved by OMB under control number 1010–0053. The proposed rule imposes very few changes to the information collection burden. The major changes are:

- Notification of drilling rig movement on or off drilling location (+100 burden hours);
- Incorporation of two new forms (Supplemental APD Information Sheet and Weekly Activity Report) separately approved under 1010–0131 and 1010–0132; and
- Submission of well testing plans (+30 burden hours).

We estimate the total annual reporting and recordkeeping ''hour'' burden for the proposed rule to be 107,866 hours representing an average burden of 830 hours per respondent. Except for the items identified as ''new'' in the following chart, the burden estimates shown are those that are estimated for the current subpart D regulations. The public has had numerous opportunities to comment on the estimates during the process to renew the OMB approval of the information collection requirements in current regulations. We have also consulted with a representative sampling of respondents to verify these estimates.

BURDEN BREAKDOWN

| Citation 30 CFR 250 Subpart D | Reporting requirement | Frequency | Number | Burden | Annual burden |
|---|---|---|---|---|---|
| 402 [Current 411] | Request approval to use blind or blind-shear ram or pipe rams and inside BOP. | On occasion | 6 requests | 10 minutes | 1 |
| 403(c), 404 [New] | Notify MMS of drilling rig movement on or off drilling location. | On occasion | 1,000 notifications | 6 minutes | 100 |
| 403(c) [Current 401] | Request approval not to shut-in well during equipment movement. | On occasion | 10 requests | 1 hour | 10 |
| 410–418, plus various references throughout subpart D*. | APD to drill, including various approvals required in subpart D and obtained via forms MMS–123 and MMS–123S, and supporting information. [*All current requirements in various sections.]. | Burden covered under 1010–0044 (form MMS–123, APD); 1010–0131 (new collection form MMS–123S, Supplemental APD Information Sheet). | | | 0 |
| 410(c), 417(b) [Current 405]. | Exploration Plan, Development and Production Plan, Development Operations Coordination Document. | Burden covered under 1010–0049 (30 CFR 250, Subpart B) | | | 0 |
| 417(c) [Current 401] | Submit 3rd party review of drilling unit | Burden covered under 1010–0958 (30 CFR 250, Subpart I) | | | 0 |
| 418(e) [Current 402] | Submit welding and burning plan | Burden covered under 1010–0114 (30 CFR 250, Subpart A) | | | 0 |
| 423 [Current 404/405] | Submit revised casing and cementing program or changes. | On occasion | 20% of 990 drilling ops. = 198. | 2 hours | 396 |
| 425 [Current 405] | Caliper, pressure test, or evaluate casing; submit evaluation results; request approval before resuming operations or beginning repairs. | Every 30 days during pro longed drilling; | 20% of 990 wells = 198. | 5 hours | 990 |
| 456(c), (f) [Current 410]. | Perform various calculations; post information. | On occasion, daily, weekly. | 144 drilling rigs × 52 = 7,488. | .25 hour | 1,872 |
| 459(a)(3) [Current 410]. | Request exception to procedure for protecting negative pressure area. | On occasion | 5 requests | 2 hours | 10 |
| 460(b), (c) [New; Current 401]. | Submit plans for well testing and notify MMS before test. | On occasion | 15 plans | 2 hours | 30 |
| 461(e) [Adjustment to current 401]. | Provide copy of well directional survey to affected leaseholder. | On occasion | 10 occasions | 1 hour | 10 |
| 462(a) [Current 408] | Prepare and post well control drill plan for crew members. | On occasion | 26 plans | 3 hours | 78 |
| 463(b) [Current 412] | Request field drilling rules be established, amended, or canceled. | On occasion | 6 requests | 2.7 hours | [1] 16 |
| 465, 467 [Current 415/416]. | Submit revised plans, changes, well/drilling records, etc., on forms MMS–124 or MMS–125. | Burden covered under 1010–0045 (form MMS–124, Sundry Notices and Reports); 1010–0046 (form MMS–125, Well Summary Report) | | | 0 |
| 465(a), (b), (3); 467(c) [New]. | In the GOMR, submit drilling activity on form MMS–133 on weekly basis. | Burden included under 1010–0132 (new form MMS–133) (Weekly Activity Report) | | | 0 |
| 465(a); 467 [Current 416]. | Submit well records, daily drilling report and other data as requested or specified by regional office. | On occasion, daily | 20% of 990 wells = 198. | 3 hours | 594 |
| 469 [Current 416] | Submit well logs and survey results | On occasion | 990 wells | 1.5 hours | 1,485 |
| 470(c)(4), (d) [Current 417]. | Submit request for reclassification of $H_2S$ zone; notify MMS if conditions change. | On occasion | 27 responses | 1.7 hours | [1] 46 |
| 470(f) [Current 417] | Submit contingency plans for operations in $H_2S$ areas. | On occasion | 27 plans (16 drill, 5 workover, 6 prod.). | 10 hours | 270 |
| 470(i) [Current 417] | Display warning signs | Not applicable: facilities would display warning signs and use other visual and audible systems | | | 0 |
| 470(j)(12) [Current 417]. | Propose alternatives to minimize or eliminate $SO_2$ hazards. | Proposals would be submitted with contingency plans; burden included in 250.470(f) | | | 0 |
| 470(j)(13)(vi) [Current 417]. | Label breathing air bottles | Not applicable: supplier normally labels bottles; facilities would routinely label if not | | | 0 |
| 470(l) [Current 417] | Notify (phone) MMS of unplanned $H_2S$ releases. | On occasion (apprx. 2/year). | 49 facilities × 2 = 98 | .2 hour | [1] 20 |

BURDEN BREAKDOWN—Continued

| Citation 30 CFR 250 Subpart D | Reporting requirement | Frequency | Number | Burden | Annual burden |
|---|---|---|---|---|---|
| 470(o)(5) [Current 417]. | Request approval to use drill pipe for well testing. | On occasion | 3 requests | 2 hours | 6 |
| 470(q)(1) [Current 417]. | Seal and mark for the presence of $H_2S$ cores to be transported. | Not applicable: facilities would mark transported cores | | | 0 |
| 470(q)(9) [Current 417]. | Request approval to use gas containing $H_2S$ for instrument gas. | On occasion | 3 requests | 2 hours | 6 |
| 470(q)(12) [Current 417]. | Analyze produced water disposed of for $H_2S$ content and submit results to MMS. | On occasion (apprx. weekly). | 4 prod. platforms × 52 = 208. | 2.8 hours | [1] 582 |
| Total Reporting: | | | 10,516 | | 6,522 |

[1] Rounded.

| Citation 30 CFR 250 Subpart D | Recordkeeping requirement | Frequency | Number | Burden | Annual burden |
|---|---|---|---|---|---|
| 403 [Current 401] | Perform operational check of crown block safety device; record results. | Weekly (52) | 144 drilling rigs × 52 = 7,488. | .1 hour | [1] 749 |
| 427 [Current 405] | Perform pressure test on all casing strings and drilling liner lap; record results. | On occasion | 144 drilling rigs × apprx. 50 per rig = 7,200. | 2 hours | 14,400 |
| 428(a) [Current 404] | Perform pressure-integrity tests and related hole-behavior observations; record results. | On occasion | 425 tests | 4 hours | 1,700 |
| 434 [Current 409] | Perform diverter tests when installed and once every 7 days; actuate system at least once every 24-hour period; record results; retain records 2 years after drilling completed. | On occasion (average 2 per drilling op). | 990 drilling operations × 2 = 1,980. | 2 hours | 3,960 |
| 450 [Current 407] | Perform BOP pressure tests, actuations and inspections; record results; retain records 2 years following completion of drilling activity. | When installed; at a minimum every 14 days; as stated for components. | 144 drilling rigs × apprx. 35 per rig = 5,040. | 6 hours | 30,240 |
| 450 [Current 407] | Function test annulars and rams; document results (Note: this test is part of BOP test when BOP test is conducted.). | Every 7 days between BOP tests (biweekly). | 144 drilling rigs × appx. 20 per rig = 2,880. | .16 hour | 461 |
| 451(c) [Current 407] | Record reason for postponing BOP test | On occasion (apprx. 2/year). | 144 drilling rigs × 2 = 288. | .1 hour | [1] 29 |
| 456(b); 457(a), 458(b) [Current 410]. | Record each drilling fluid circulation; test drilling fluid, record results; record daily inventory of drilling fluid/materials; test and recalibrate gas detectors; record results. | On occasion, daily, weekly, quarterly. | 144 drilling rigs × 52 = 7,488. | 1.25 hours | 9,360 |
| 462(c) [Current 408] | Perform well-control drills; record results | On occasion (2 crews × 52=102). | 144 drilling rigs × 102 = 14,688. | 1 hour | 14,688 |
| 466, 468 [Current 416] | Retain drilling records for 90 days after drilling complete; retain casing/liner pressure, diverter, and BOP records for 2 years; retain well completion/well workover until well is permanently plugged/abandoned or lease assigned. | Annual records maintenance. | 990 wells | 1.5 hours | 1,485 |
| 470(g)(2), (g)(5) [Current 417]. | Conduct $H_2S$ training; post safety instructions; document training. | On occasion; annual refresher (apprx. 2/year). | 49 facilities × 2 = 98 | 2 hours | 196 |
| 470(h)(2) [Current 417]. | Conduct drills and safety meetings; document attendance. | Weekly (52) | 49 facilities × 52 = 2,548. | 1 hour | 2,548 |
| 470(j)(8) [Current 417] | Test $H_2S$ detection and monitoring sensors during drilling; record testing and calibrations (apprx. 12 sensors per rig). | On occasion (daily during drilling). | 26 drilling rigs × 365 days = 9,490. | 2 hours | 18,980 |
| 470(j)(8) [Current 417] | Test $H_2S$ detection and monitoring sensors during production; record testing and calibrations (apprx. 30 sensors on 5 platforms + apprx. 42 sensors on 23 platforms). | 14 days | 28 prod. platforms × 26 weeks = 728. | 3.5 hours | 2,548 |
| Total Recordkeeping: | | | | | 101,344 |

[1] Rounded.

| | | |
|---|---|---|
| Total Reporting | = | 6,522 |
| Total Recordkeeping | = | 101,344 |
| Total Burden | = | 107,866 |

1. MMS specifically solicits comments on the following questions:

(a) Is the proposed collection of information necessary for MMS to properly perform its 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 those who are to respond, including 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 and recordkeeping ''non-hour cost'' burden resulting from the collection of information. We have not identified any, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component and (b) annual operation, maintenance, and purchase of services component. 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 start-up 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: (1) Before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

**Regulatory Flexibility (RF) Act**

The Department of the Interior (DOI) certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This proposed rule applies to all lessees and drilling contractors that operate on the OCS. Small lessees and drilling contractors that operate under this proposed rule would fall under the Small Business Administration's (SBA) Standard Industrial Classification (SIC) codes 1311 Crude Petroleum and Natural Gas and 1381 Drilling Oil and Gas Wells. Under these SIC codes, SBA considers all companies with fewer than 500 employees to be a small business. Given the variability in the industry to changes in the relative prices of oil and natural gas, the numbers of small entities affected by the proposed rule may change over time. Based on data from 1998, we estimate that of the 130 lessees that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). We also estimate that 20 drilling contractors operate on the OCS, and that only one of those drilling contractors is classified as a small business. The number of drilling contractors is based on current drilling activity on the OCS, and the size of each drilling contractor is based on research into company statistics.

New compliance costs associated with this proposed rule fall within two categories—of meeting new drilling requirements and the cost of purchasing additional blind shear rams. Drilling requirement costs will be borne by the OCS lessees who explore for and produce oil and are dependent on the number of wells drilled. The cost of the blind shear rams will be borne by drilling contractors.

We estimate that the total annual cost of the new drilling requirements proposed in this rule to be approximately $670,000, as shown in the following table. The table also shows the estimated cost per well for the approximately 700 wells drilled annually on the OCS using a surface BOP stack.

ESTIMATED COSTS OF ADDITIONAL DRILLING REQUIREMENTS

| Cost | Cost per well | Total cost for 700 wells drilled annually |
|---|---|---|
| One hour per well additional evaluation time on cementing operations @ $100 | $100 | $70,000 |
| One hour per well additional drilling rig rental @ $850 | 850 | 595,000 |
| Annual reporting and paperwork burden—140 hours @$50 | 10 | 7,000 |
| Total | 960 | 672,000 |

*The annual reporting and paperwork burden for the entire Subpart D—''Oil and Gas Drilling Operations' is 107,866 hours as indicated in the Paperwork Reduction Act of 1995 (PRA) section of this preamble. However, the new burden that would be added by this proposed rule is only 140 hours (§ 250.403(c)—100 hours; § 250.460(b), (c)—30 hours; and § 250.461(e)—10 hours) as shown in the reporting and recordkeeping burden tables in the PRA section.

As indicated in the table, the estimated cost per well is about $1,000. Based on drilling data from 1999, we estimate that the 90 small businesses that explore for and produce oil and gas on the OCS drill about 300 of the 700 wells drilled annually on the OCS using a surface BOP stack. Thus, with the small businesses drilling an average of 3⅓ wells per year, the annual economic effect for each small business is about $3,300, or about $300,000 in total. The estimated additional cost of $1,000 per well is quite small (about .02 percent) when compared to the $5 million average cost of drilling a well. Based on this very low percentage of well cost, we believe that these proposed revisions to the regulations will not have a significant economic effect on any small lessee. However, we do invite comment on our analytical procedures, data inputs, and findings.

The estimated economic effects of the requirement to use blind-shear rams on surface BOP stacks is the cost to purchase the rams. This requirement imposes no reporting or recordkeeping burden. This requirement primarily will affect drilling contractors operating jackup and platform rigs on the OCS who will be required to purchase the rams. Using information from 1999, the cost for a set of 10,000 pounds per-square-inch rams and associated equipment is about $175,000. Some sets of rams for lower-rated BOP stacks will cost less, while a few sets of rams will cost more for higher-rated BOP stacks,

but the average cost will remain at about $175,000.

We estimate that drilling contractors will need to purchase a total of 80 blind shear rams to meet the proposed requirements. At an average cost of about $175,000, the economic impact will be $14,000,000. The largest drilling contractor may need to purchase up to 20 sets of blind-shear rams, while the one small drilling contractor will not need to purchase any blind-shear rams because the contractor already has blind-shear rams for its rigs. A large contractor may get a minor reduction in the cost with a bulk purchase, but this reduction should not significantly affect the competition between large and small contractors because the unit costs will not vary much. Purchase of the rams to meet the proposed requirements will be an initial one-time cost. A blind-shear ram should last for 20 years if properly maintained.

The blind-shear ram requirement should not hinder the ability of lessees or contractors, including small businesses, to conduct business on the OCS. The proposed rule provides for a 1-year period after the effective date for drilling contractors to plan and purchase the rams and associated equipment. This will allow contractors sufficient time to obtain the equipment. In addition, several drilling contractors likely have one or more sets of blind-shear rams, because some lessees currently require the installation of these rams for their wells. Also, some contractors may choose not to outfit all of their rigs with blind-shear rams immediately. Those contractors may continue to market those rigs in State or international waters where blind-shear rams are not required.

The cost of blind-shear rams probably will affect the rates that drilling contractors charge lessees and operators to drill wells. Contractors base these rates, called day rates, primarily on the supply and demand of drilling rigs. We estimate that a minor increase in day rates (estimated at between $250 and $750 depending on rig capability and ram size) would increase the costs of drilling a typical OCS well by less than 1 percent. The minor increase in day rates to pay for the blind-shear rams should not last more than 3 years (the estimated time to pay for the rams). Since drilling contractors will have 1 year from the date of the final rule to purchase this equipment, they should have sufficient time to plan their purchase and adjust their day rates to reflect this cost. MMS believes the purchase of this equipment or any adjustments in day rates are unlikely to affect the competition between large and small drilling contractors.

The following table summarizes the estimated economic effects associated with this proposed rule.

| Requirement | Frequency | Total cost | Cost to small businesses |
|---|---|---|---|
| New drilling rules | Annual | $672,000 | $300,000 |
| Use of blind shear rams | One-time | 14,000,000 | 0 |
| Total | | 14,672,000 | 300,000 |

As discussed above, we do not believe that this rule will have a significant impact on the lessees and drilling contractors who explore for and produce oil and gas on the OCS, including those that are classified as small businesses. MMS asks for comments on the expected duration of the anticipated costs and the finding that the impacts on small drilling contractors are not significant.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This proposed rule is not a major rule under (5 U.S.C. 804(2)) the SBREFA. This proposed rule:

(a) Does not have an annual effect on the economy of $100 million or more. As described above, we estimate that the initial one-time cost of the proposed rule to be $14 million and $672,000 in subsequent years. These costs will not cause an annual effect on the economy of $100 million.

(b) Will not cause a major increase in costs or prices or consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The minor increase in drilling costs will not change the way the oil and gas industry conducts business, nor will it affect regional oil and gas prices; therefore, it will not cause major cost increases for consumers, the oil and gas industry, or any Government agencies.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of U.S.-based enterprises to compete with foreign-based enterprises. All lessees and drilling contractors, regardless of nationality, will have to comply with the requirements of this rule. So the rule will not affect competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

*Unfunded Mandates Reform Act (UMRA) of 1995 (E.O. 12866)*

This proposed rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule does not have any Federal mandates nor does the proposed rule have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

*Federalism (E.O. 13132)*

According to E.O. 13132, this rule does not have Federalism implications. This proposed rule does not substantially and directly affect the relationship between the Federal and State Governments. The rule applies to lessees and drilling contractors that operate on the OCS. This rule does not impose costs on States or localities. Any costs will be the responsibility of the lessees and drilling contractors.

*Clarity of This Regulation*

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interfere with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the proposed rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the proposed rule in the ''Supplementary Information'' section of this preamble helpful in understanding the proposed rule? What else can we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

**List of Subjects in 30 CFR Part 250**

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: February 11, 2000.

**Sylvia V. Baca,**

*Acting Assistant Secretary, Land and Minerals Management.*

For the reasons stated in the preamble, the MMS proposes to amend 30 CFR Part 250 as follows:

## PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

2. In § 250.198, in the table in paragraph (e), the following changes are made in alphanumeric order:

A. Add an entry for API RP 53 as set forth below.

B. Revise the entry for API RP 500 as set forth below.

**§ 250.198 Documents incorporated by reference.**

* * * * *

(e) * * *

| Title of documents | Incorporated by reference at |
|---|---|
| * * * * * * * | |
| API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells, Third Edition, March 1997, API Stock No. G53003 | § 250.442(b); § 250.446(a). |
| API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities, First Edition, June 1, 1991, API Stock No. G06005 | § 250.459; § 250.802(e)(4)(l); § 250.803(b)(9)(l); § 250.1628(b)(3); (d)(4)(l); § 250.1629(b)(4)(l). |
| * * * * * * * | |

3. In 30 CFR part 250, subpart D, § 250.417 is redesignated as § 250.470, §§ 250.400 through 250.416 are revised, and §§ 250.417 through 250.469 are added and a new undesignated center heading is added preceding redesignated §§ 250.470 to read as set forth below. For the convenience of the reader, the table of contents for subpart D is also set forth below:

**Subpart D—Oil and Gas Drilling Operations**

Sec.

250.400 Who is subject to the requirements of this subpart?
250.401 What must I do to keep wells under control?
250.402 When and how must I secure a well?
250.403 What safety requirements must my drilling unit meet?
250.404 What mobile drilling unit movements must I report?

**Application for Permit To Drill Requirements**

250.410 How can I apply for a permit to drill a well?
250.411 What material must I submit with my application?
250.412 What requirements must my plat meet?
250.413 What items must my description of well drilling design criteria address?
250.414 What items must my drilling prognosis include?
250.415 What items must my casing and cementing programs include?
250.416 What information must be included in the diverter and BOP descriptions?
250.417 What information must I provide if I intend to use a mobile drilling unit to drill a proposed rule?
250.418 What additional requirements must I meet?

**Casing and Cementing Requirements**

250.420 What well casing and cementing requirements must I meet?
250.421 What are the casing and cementing requirements by type of casing string?
250.422 When may I resume drilling after cementing?
250.423 How must I remedy cementing and casing problems and situations?
250.424 What are the requirements for pressure testing casing?
250.425 What special pressure tests must I perform on casings for prolonged drilling operations?
250.426 What are the requirements for pressure testing liners?
250.427 What are the recordkeeping requirements for casing and liner pressure tests?
250.428 What are the requirements for pressure integrity tests?

**Diverter System Requirements**

250.430 When must I install a diverter system?
250.431 What are the diverter design and installation requirements?
250.432 What must I do to obtain a departure to diverter design and installation requirements?
250.433 How must I test the diverter system after installation?
250.434 What are the recordkeeping requirements for diverter tests?

**Blowout Preventer (BOP) System Requirements**

250.440 What are the general requirements for BOP systems and system components?
250.441 What are the requirements for a surface BOP stack?
250.442 What are the requirements for a subsea BOP stack?
250.443 What associated BOP systems and related equipment must my BOP system include?
250.444 What are the choke manifold requirements?
250.445 What are the requirements for kelly cocks, inside BOPs, and drill-string safety valves?
250.446 What must I do to maintain and inspect my BOP?
250.447 When must I conduct BOP system pressure tests?
250.448 What are the BOP pressure tests requirements?
250.449 What additional BOP testing requirements must I comply with?
250.450 What are the recordkeeping requirements for BOP tests?

250.451 How do I remedy BOP problems and situations?

**Drilling Fluid Requirements**

250.455 What are the general requirements for a drilling fluid program?
250.456 What are the required safe drilling fluid program practices?
250.457 What equipment must I have to test and monitor drilling fluids?
250.458 What quantities of drilling fluids are required?
250.459 What are the safety requirements for drilling fluid-handling areas?

**Other Drilling Requirements**

250.460 What are the requirements for well testing?
250.461 What are the requirements for directional and inclination surveys?
250.462 What are the requirements for well-control drills?
250.463 Who establishes field drilling rules?

**Sundry Notices and Well Records**

250.465 When must I submit sundry notices to MMS?
250.466 What well records must I keep?
250.467 What well records may I be required to submit?
250.468 How long must I keep drilling-related records?
250.469 Must I submit copies of well logs?

**Hydrogen Sulfide**

250.470 Hydrogen sulfide.

## Subpart D—Oil and Gas Drilling Operations

### General Requirements

#### § 250.400 Who is subject to the requirements of this subpart?

The requirements of this subpart apply to lessees, operators, and their contractors and subcontractors.

#### § 250.401 What must I do to keep wells under control?

You must take necessary precautions to keep wells under control at all times. You must:

(a) Use the best available and safest drilling technology to monitor and evaluate well conditions and to minimize the potential for the well to flow or kick;

(b) Have a person onsite that represents your interests and can fulfill your responsibilities;

(c) Ensure that the toolpusher or a member of the drilling crew maintains continuous surveillance of the rig floor from the beginning of drilling operations until the well is abandoned, unless you have secured the well with blowout preventers (BOPs) or packers;

(d) Use personnel trained according to the provisions of subpart O; and

(e) Use and maintain equipment and materials necessary to ensure the safety and protection of personnel, equipment, natural resources, and the environment.

#### § 250.402 When and how must I secure a well?

Whenever you interrupt drilling operations, you must install a downhole safety device, such as a cement plug, bridge plug, or packer. You must install the device as deep as possible within a properly cemented casing string.

(a) Among the events that may cause you to interrupt drilling operations are:

(1) Evacuation of the drilling crew;

(2) Inability to keep the drilling rig on location, or

(3) Repair to major drilling or well-control equipment;

(b) For floating drilling operations, the District Supervisor may approve the use of a blind or blind-shear ram or pipe rams and an inside BOP if you don't have time to install a downhole safety device or if special circumstances occur.

#### § 250.403 What safety requirements must my drilling unit meet?

Your drilling unit must meet all of the safety requirements in this section.

| Required safety measure | When required | Additional requirements |
|---|---|---|
| (a) Crown block safety device ..... | For each drilling unit ..... | (1) The device must prevent the traveling block from striking the crown block.<br>(2) You must check the device for proper operation once a week and after each drill-line slipping operation.<br>(3) You must record the results of this operational check in the driller's report. |
| (b) Diesel engine air intake shut-down device. | For each diesel engine[1]. ..... | (1) For a diesel engine that is not continuously manned, you must install an automatic shutdown device.[1]<br>(2) For a diesel engine that is continuously manned, you may install either a manual or automatic air intake shutdown device. |
| (c) Shut in all producible wells located in the affected wellbay. | When you move a drilling rig or related equipment on a platform. | You must shut in each well below the surface and at the wellhead, unless otherwise approved by the District Supervisor. |
| (d) Emergency shutdown station installed near the driller's console. | When you conduct drilling operations on a platform that has producing wells or other hydrocarbon flow. | |

[1] You do not need to install an air-intake shutdown device on a diesel engine that starts a larger engine or that powers any of the following: (1) Firewater pumps; (2) Emergency generators; (3) BOP accumulator systems; (4) Air supply to divers or confined entry personnel; (5) Temporary equipment on nonproducing platforms; or (6) Portable single cylinder rig washers.

#### § 250.404 What mobile drilling unit movements must I report?

You must report the movement of a mobile drilling unit on and off a drilling location to the District Supervisor. You must inform the District Supervisor 24 hours before the arrival of the rig on location and 24 hours before the rig departs from the location.

### Applying for a Permit to Drill

#### § 250.410 How can I apply for a permit to drill a well?

(a) You must obtain written or oral approval from the District Supervisor before you begin drilling any well. To obtain approval, you must :

(1) Submit the forms required by paragraph (b) of this section;

(2) Submit the information required by § 250.411;

(3) Include the well in your approved Exploration Plan (EP), Development and Production Plan (DPP), or Development Operations Coordination Document (DOCD); and

(4) Meet the oil spill financial responsibility requirements for offshore facilities as required by 30 CFR part 253.

(b) You must submit the following forms to the District Supervisor:

(1) An original and two copies of form MMS–123, Application for a Permit to Drill (APD);

(2) A separate public information copy of form MMS–123 that meets the requirements of § 250.127; and

(3) Form MMS–123S, APD Information Sheet.

**§ 250.411 What material must I submit with my application?**

In addition to forms MMS–123 and MMS–123S, you must include the information described in the following table.

| Information that you must include with an APD | Where to find a description |
|---|---|
| (a) Plat that shows locations of the proposed well | § 250.412 |
| (b) Design criteria used for the proposed well | 250.413 |
| (c) Drilling prognosis | 250.414 |
| (d) Casing and cementing programs | 250.415 |
| (e) Diverter and BOP systems descriptions | 250.416 |
| (f) Requirements for using a mobile drilling unit | 250.417 |
| (g) Additional requirements | 250.418 |

**§ 250.412 What requirements must my plat meet?**

(a) Have a scale of 1:24,000 (1 inch = 2,000 feet);

(b) Show the surface and subsurface locations of the proposed well and all the wells in the vicinity;

(c) Show the surface and subsurface locations of the proposed well in feet or meters from the block line;

(d) Contain the longitude and latitude coordinates, and either Universal Transverse Mercator grid-system coordinates or state plane coordinates in the Lambert or Transverse Mercator Projection system for the surface and subsurface locations of the proposed well; and

(e) State the units and geodetic datum (including whether the datum is North American Datum 27 or 83) for these coordinates. If the datum was converted, you must state the method used for this conversion, since the various methods may produce different values.

**§ 250.413 What items must my description of well drilling design criteria address?**

(a) Pore pressures;

(b) Formation fracture gradients, adjusted for water depth;

(c) Potential lost circulation zones;

(d) Drilling fluid weights;

(e) Casing setting depths;

(f) Maximum anticipated surface pressures. For this section, maximum anticipated surface pressures are the pressures that you reasonably expect to be exerted upon a casing string and its related wellhead equipment. In calculating maximum anticipated surface pressures, you must consider: drilling, completion, and producing conditions; drilling fluid densities to be used below various casing strings; fracture gradients of the exposed formations; casing setting depths; total well depth; formation fluid types; safety margins; and other pertinent conditions. You must include the calculations used to determine the pressures for the drilling and the completion phases, including the anticipated surface pressure used for designing the production string;

(g) A single plot containing estimated pore pressures, formation fracture gradients, proposed drilling fluid weights, and casing setting depths in true vertical measurements;

(h) A summary report of the shallow hazards site survey that describes the geological and manmade conditions; and

(i) Permafrost zones, if applicable.

**§ 250.414 What items must my drilling prognosis include?**

(a) Projected plans for coring at specified depths;

(b) Projected plans for logging;

(c) Planned safe drilling margin between proposed drilling fluid weights and estimated pore pressures. This safe drilling margin may be shown on the plot required by § 250.413(g);

(d) Estimated depths to the top of significant marker formations;

(e) Estimated depths to significant porous and permeable zones containing fresh water, oil, gas, or abnormally pressured formation fluids;

(f) Estimated depths to faults; and

(g) Estimated depths of permafrost, if applicable.

**§ 250.415 What items must my casing and cementing programs include?**

(a) Hole sizes and casing sizes, including: weights; grades; tension, collapse, and burst values; types of connection; and setting depths (measured and true vertical depth);

(b) Casing design safety factors for tension, collapse, and burst with the assumptions made to arrive at these values;

(c) Type and amount of cement (in cubic feet) planned for each casing string; and

(d) In areas containing permafrost, setting depths for conductor and surface casing based on the anticipated depth of the permafrost. Your program must provide protection from thaw subsidence and freezeback effect, proper anchorage, and well control.

**§ 250.416 What information must be included in the diverter and BOP descriptions?**

(a) A description of the diverter system and its operating procedures;

(b) A schematic drawing of the diverter system (plan and elevation views) that shows:

(1) the size of the annular preventer installed in the diverter housing;

(2) spool outlet internal diameter(s);

(3) diverter-line lengths and diameters; burst strengths and radius of curvature at each turn; and

(4) valve type, size, working pressure rating, and location;

(c) A description of the BOP system and system components, including pressure ratings of BOP equipment and proposed BOP test pressures; and

(d) A schematic drawing of the BOP system that shows the inside diameter of the BOP stack, number and type of preventers, location of choke and kill lines, and associated valves.

**§ 250.417 What information must I provide if I intend to use a mobile drilling unit to drill a proposed well?**

(a) *Fitness requirements.* You must provide information and data to demonstrate the drilling unit's capability to perform at the proposed drilling operation. This information must include the maximum environmental and operational conditions that the unit is designed to withstand, including the minimum air gap necessary for both hurricane and non-hurricane seasons. If sufficient environmental information and data are not available, the District Supervisor may require you to collect and report this information.

(b) *Foundation requirements.* You must provide information to show that site-specific soil and oceanographic conditions are capable of supporting the proposed drilling unit. If you provided sufficient site-specific information in your EP, DPP, or DOCD, you may reference that information. The District Supervisor may require you to conduct

additional surveys and soil borings before approving the APD.

(c) *Third-party review.* If the design of the drilling unit is unique or has not been proven for use in the proposed environment, the District Supervisor may require you to submit a third-party review of the unit's design. If required, you must obtain the third-party review according to § 250.903. You may submit this information before submitting an APD.

(d) *Frontier areas.* If you plan to drill in a frontier area, you must have a contingency plan that addresses design and operating limitations of the drilling unit. Your plan must identify the actions necessary to maintain safety and prevent damage to the environment. Actions must include the suspension, curtailment, or modification of drilling or rig operations to remedy various operational or environmental situations (*e.g.* vessel motion, riser offset, anchor tensions, wind speed, wave height, currents, icing or ice-loading, settling, tilt or lateral movement, resupply capability).

(e) *U.S. Coast Guard (USCG) Documentation.* You must provide the current Certificate of Inspection or Letter of Compliance from the USCG. You must also provide current documentation of any operational limitations imposed by an appropriate classification society.

(f) *Floating drilling unit.* If you use a floating drilling unit, you must have a contingency plan for moving off location in an emergency situation.

(g) *Inspection of unit.* The drilling unit must be available for inspection by the District Supervisor before commencing operations.

(h) Once the District Supervisor has approved a mobile drilling unit for use, you do not need to re-submit the information required by this section unless changes in equipment affect its rated capacity to operate in the District.

**§ 250.418 What additional requirements must I meet?**

You must include the following with the APD:

(a) Rated capacities of the drilling rig and major drilling equipment, if not already on file with the appropriate District office;

(b) Drilling fluids program that includes the minimum quantities of drilling fluids and drilling fluid materials, including weight materials, to be kept at the site;

(c) Proposed directional plot if the well is to be directionally drilled;

(d) Hydrogen Sulfide Contingency Plan (refer to § 250.470) if applicable and not previously submitted;

(e) Welding and Burning Plan (refer to § 250.106) if applicable and not submitted previously;

(f) In areas subject to subfreezing conditions, evidence that the drilling equipment, BOP systems and components, diverter systems, and other associated equipment and materials are suitable for operating under such conditions;

(g) A list and description of all requests for using alternative procedures or departures from the requirements of this subpart in one place in the APD. You must explain how the alternative procedures afford an equal or greater degree of protection, safety, or performance, or why you need the departure; and

(h) Such other information as the District Supervisor may require.

## Casing and Cementing Requirements

**§ 250.420 What well casing and cementing requirements must I meet?**

You must case and cement all wells. Your casing and cementing programs must meet the requirements of this section and of §§ 250.421 through 250.428.

(a) *What casing and cementing programs must do.* Your casing and cementing programs must:

(1) Properly control formation pressures and fluids;

(2) Prevent the direct or indirect release of fluids from any stratum through the wellbore into offshore waters;

(3) Prevent communication between separate hydrocarbon-bearing strata;

(4) Protect freshwater aquifers from contamination; and

(5) Support unconsolidated sediments.

(b) *Casing requirements.* (1) You must design casing (including liners) to withstand the anticipated stresses imposed by tensile, compressive, and buckling loads; burst and collapse pressures; thermal effects; and combinations thereof.

(2) The casing design must include safety measures that ensure well control during drilling and safe operations during the life of the well.

(c) *Cementing requirements.* You must design and conduct your cementing jobs so that cement composition, placement techniques, and waiting times ensure that the cement placed behind the bottom 500 feet of casing attains a minimum compressive strength of 500 psi.

**§ 250.421 What are the casing and cementing requirements by type of casing string?**

The table in this section identifies specific design, setting, and cementing requirements for casing strings and liners. For the purposes of subpart D, the casing strings in order of normal installation are as follows: drive or structural, conductor, surface, intermediate, and production casings (including liners). The District Supervisor may approve or prescribe other casing and cementing requirements where appropriate.

| Casing type | Casing requirements | Cementing requirements |
|---|---|---|
| (a) Drive or Structural | Set by driving, jetting, or drilling to the minimum depth as approved or prescribed by the District Supervisor. | If you drilled a portion of this hole, you must use enough cement to fill the annular space back to the mudline. |
| (b) Conductor | Design casing and select setting depths based on relevant engineering and geologic factors. These factors include the presence or absence of hydrocarbons, potential hazards, and water depths. | Use enough cement to fill the calculated annular space back to the mudline. |
| | | Verify annular fill by observing cement returns. If you cannot observe cement returns, use additional cement to ensure fill-back to the mudline. |
| | Set casing immediately before drilling into formations known to contain oil or gas. If you encounter oil or gas or unexpected formation pressure before the planned casing point, you must set casing immediately. | For drilling on an artificial island or when using a glory hole, you must discuss the cement fill level with the District Supervisor. |
| (c) Surface | Design casing and select setting depths based on relevant engineering and geologic factors. These factors include the presence or absence of hydrocarbons, potential hazards, and water depths. | Use enough cement to fill the calculated annular space to at least 200 feet inside the conductor casing. |
| | | When geologic conditions such as near-surface fractures and faulting exist, you must use enough cement to fill the calculated annular space to the mudline. |

| Casing type | Casing requirements | Cementing requirements |
|---|---|---|
| (d) Intermediate ..... | Design casing and select setting depth based on anticipated or encountered geologic characteristics or wellbore conditions. | Use enough cement to cover and isolate all hydrocarbon-bearing zones in the well.<br>As a minimum, you must cement the annular space 500 feet above the casing shoe and each zone to be isolated. |
| (e) Production ..... | Design casing and select setting depth based on anticipated or encountered geologic characteristics or wellbore conditions. | Use enough cement to cover or isolate all hydrocarbon-bearing zones above the shoe. As a minimum, you must cement the annular space at least 500 feet above the casing shoe and the uppermost hydrocarbon-bearing zone. |
| (f) Liners ..... | If you use a liner as conductor or surface casing, you must set the top of the liner at least 200 feet above the previous casing/liner shoe.<br>If you use a liner as an intermediate or production casing, you must set the top of the liner at least 100 feet above the previous casing shoe. | Same as cementing requirements for specific casing types. For example, a liner used as intermediate casing must be cemented according to the cementing requirements for intermediate casing. |

**§ 250.422 When may I resume drilling after cementing?**

(a) After cementing surface, intermediate, or production casing (or liners), you may not resume drilling until the cement has been held under pressure for 12 hours. For conductor casing, you may not resume drilling until the cement has been held under pressure for 8 hours. Methods of holding cement under pressure include using float valves to hold the cement in place.

(b) If you plan to nipple down your diverter or BOP stack during the 8- or 12-hour waiting time, you must determine, in advance, when it will be safe to conduct this activity. Your determination must consider cement composition, well conditions, and the effects of nippling down the equipment.

**§ 250.423 How must I remedy cementing and casing problems and situations?**

The table in this section describes remedies to problems and situations that lessees encounter on a regular basis during casing and cementing activities.

| If you have the following problem or situation: | Then you must . . . |
|---|---|
| (a) Encounter unexpected formation pressures or conditions that warrant revising your casing design. | Submit a revised casing program to the District Supervisor for approval. |
| (b) Change casing setting depths more than 100 feet from the approved APD. | Submit those changes to the District Supervisor for approval. |
| (c) Indication of inadequate cement job (such as lost returns, cement channeling, or failure of equipment). | (1) Pressure test the casing shoe,<br>(2) Run a temperature survey,<br>(3) Run a cement bond log, or<br>(4) Use a combination of these techniques. |
| (d) Inadequate cement job ..... | Re-cement or take other remedial actions as approved by the District Supervisor. |
| (e) Primary cement job did not isolate abnormal pressure intervals. | Isolate those intervals from normal pressures by squeeze cementing before you complete; suspend operations; or abandon the well, whichever occurs first. |
| (f) Plan to produce a well ..... | Have at least two cemented casing strings (does not include liners) in the well. |
| (g) Plan to wash out or displace some cement to facilitate casing removal upon well abandonment. | Obtain approval from the District Supervisor. |
| (h) Plan to drill a well without setting conductor casing. | Submit geologic data and information to the District Supervisor that demonstrates the absence of shallow hydrocarbons or hazards. This information must include logging and drilling fluid-monitoring from wells previously drilled within 500 feet of the proposed well path down to the next casing point. |
| (i) Plan to use less than required cement for the surface casing during floating drilling operations. | Submit information to the District Supervisor that demonstrates the use of less cement is necessary to provide protection from burst and collapse pressures. |
| (j) Plan to cement across a permafrost zone ..... | Use cement that sets before it freezes and has a low heat of hydration. |
| (k) Plan to leave the annulus opposite a permafrost zone uncemented. | Fill the annulus with a liquid that has a freezing point below the minimum permafrost temperature and minimizes corrosion. |
| (l) If your problem or situation is not described in this table. | Contact the District Supervisor. |

**§ 250.424 What are the requirements for pressure testing casing?**

(a) You must pressure test each string of casing to 70 percent of its minimum internal yield. This testing requirement does not apply to drive or structural casing. When a diverter is installed on conductor casing, you must test the casing to a minimum of 200 psi. The District Supervisor may approve or require other casing test pressures.

(b) You may not resume drilling or other down-hole operations until you obtain a satisfactory pressure test. If the pressure declines more than 10 percent in a 30-minute test or if there is another indication of a leak, you must re-cement, repair the casing, or run additional casing to provide a proper seal.

**§ 250.425 What special pressure tests must I perform on casings for prolonged drilling operations?**

(a) If wellbore operations continue for more than 30 days within a casing string run to the surface, you must stop drilling operations as soon as

practicable thereafter and evaluate the effects of the prolonged operations on continued drilling operations and the life of the well. At a minimum, you must:

(1) Caliper or pressure test the casing; and

(2) Report the results of your evaluation to the District Supervisor and obtain approval of those results before resuming operations.

(b) If casing integrity has deteriorated to a level below minimum safety factors, you must:

(1) Repair the casing or run another casing string; and

(2) Obtain approval from the District Supervisor before you begin repairs.

**§ 250.426 What are the requirements for pressure testing liners?**

(a) You must test each drilling liner (and liner-lap) to a pressure at least equal to the anticipated pressure to which the liner will be subjected during the formation pressure-integrity test below that liner shoe, or subsequent liner shoes if set. The District Supervisor may approve or require other liner test pressures.

(b) You must test each production liner (and liner-lap) to a minimum of 500 psi above the formation fracture pressure at the casing shoe into which the liner is lapped.

(c) You may not resume drilling or other down-hole operations until you obtain a satisfactory pressure test. If the pressure declines more than 10 percent in a 30-minute test or if there is another indication of a leak, you must re-cement, repair the liner, or run additional casing/liner to provide a proper seal.

**§ 250.427 What are the recordkeeping requirements for casing and liner pressure tests?**

You must record the time, date, and results of each pressure test in the driller's report. In addition, you must record each test on a pressure chart and have your onsite representative certify (sign and date) the test as correct.

**§ 250.428 What are the requirements for pressure integrity tests?**

You must conduct a pressure integrity test below the surface casing/liner and intermediate casing(s)/liner(s). The District Supervisor may require you to run a pressure-integrity test at the conductor casing shoe if warranted by local geologic conditions or the planned casing setting depth. You must conduct each pressure integrity test after drilling no more than 50 feet of new hole below the casing shoe. You must test to either the formation leak-off pressure or to an equivalent drilling fluid weight if identified in an approved APD.

(a) You must use the pressure integrity test and related hole-behavior observations, such as pore-pressure test results, gas-cut drilling fluid, and well kicks to adjust the drilling fluid program and the setting depth of the next casing string. You must record all test results and hole-behavior observations made during the course of drilling related to formation integrity and pore pressure in the driller's report.

(b) While drilling, you must maintain the safe drilling margin identified in the approved APD. When you cannot maintain this safe margin, you must suspend drilling operations and remedy the situation.

## Diverter System Requirements

**§ 250.430 When must I install a diverter system?**

You must install a diverter system before you drill a conductor or surface hole. You must design, install, use, maintain, and test the diverter system to ensure proper diversion of gases, water, drilling fluid, and other materials away from facilities and personnel. The diverter system consists of a diverter sealing element, diverter lines, and control systems.

**§ 250.431 What are the diverter design and installation requirements?**

You must design and install your diverter system to:

(a) Use diverter spool outlets and diverter lines that have an internal diameter of at least 10 inches for surface wellhead configurations and at least 12 inches for floating drilling operations;

(b) Use dual diverter lines arranged to provide for downwind diversion capability;

(c) Use at least two diverter control stations. One station must be on the drilling floor. The other must be in a readily accessible location away from the drilling floor;

(d) Use only remote-controlled valves in the diverter lines. All valves in the diverter system must be full-opening. You may not install manual or butterfly valves in any part of the diverter system;

(e) Minimize the number of turns (only one 90-degree turn allowed for each line for bottom-founded drilling units) in the diverter lines, maximize the radius of curvature of turns, and target all right-angles and sharp turns;

(f) Anchor and support the entire diverter system to prevent whipping and vibration; and

(g) Protect all diverter-control instruments and lines from damage by thrown or falling objects.

**§ 250.432 What must I do to obtain a departure to diverter design and installation requirements?**

The table below describes possible departures to the diverter requirements and the conditions required for each departure. To obtain one of these departures, you must have discussed or noted the departure in your APD.

| If you want a departure to: | Then you must . . . |
|---|---|
| (a) Use flexible hose for diverter lines instead of rigid pipe | Use flexible hose that has integral end couplings. |
| (b) Use only one spool outlet for your diverter system | (1) Have branch lines that meet the minimum internal diameter requirements: and<br>(2) provide downwind diversion capability. |
| (c) Use a spool with an outlet with an internal diameter of less than 10 inches on a surface wellhead. | Use a spool that has dual outlets with an internal diameter of at least 8 inches. |
| (d) Use a single diverter line for floating drilling operations on a dynamically positioned drillship. | Maintain an appropriate vessel heading to provide for downwind diversion. |
| (e) If the departure you need is not described in this table | Contact the District Supervisor. |

**§ 250.433 How must I test the diverter system after installation?**

When you install the diverter system, you must actuate the diverter sealing element, diverter valves, and diverter-control systems and control stations. You must also flow-test the vent lines.

(a) For drilling operations with a surface wellhead configuration, you must actuate the diverter system at least once every 24-hour period after the initial test. After you have nipped up on conductor casing, you must pressure-test the diverter-sealing element and diverter valves to a minimum of 200 psi. While the diverter is installed, you must

conduct subsequent pressure tests within 7 days of the previous test.

(b) For floating drilling operations with a subsea BOP stack, you must actuate the diverter system at least once every 7 days after the previous test.

(c) You must alternate actuations and tests between control stations.

#### § 250.434 What are the recordkeeping requirements for diverter tests?

You must record the time, date, and results of all diverter actuations and tests in the driller's report. In addition, you must:

(a) Record the diverter pressure test on a pressure chart;

(b) Require your onsite representative to certify (sign and date) the pressure test chart as correct;

(c) Identify the control station or pod used during the test or actuation;

(d) Identify problems or irregularities observed during the testing or actuations and record actions taken to remedy the problems or irregularities;

(e) Retain all pressure charts and reports pertaining to the diverter tests and actuations at the facility for the duration of drilling; and

(f) After drilling is completed, retain all the records listed in this section for 2 years at the facility, at the lessee's field office nearest to the facility, or at another location conveniently available to the District Supervisor.

### Blowout Preventer (BOP) System Requirements

#### § 250.440 What are the general requirements for BOP systems and system components?

You must design, install, maintain, and use the BOP system and system components to ensure well control. The working-pressure rating of each BOP component must exceed maximum anticipated surface pressures. The BOP system includes the BOP stack and associated BOP systems and equipment.

#### § 250.441 What are the requirements for a surface BOP stack?

(a) When you drill with a surface BOP stack, you must install the BOP system before drilling below surface casing. The surface BOP stack must have at least four remote-controlled, hydraulically operated BOPs, consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind or blind-shear rams.

(b) One year after the effective date of this final rule, the surface BOP stack must have at least four remote-controlled, hydraulically operated BOPs consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind-shear rams.

(c) In addition to the stack, you must install the associated BOP systems and equipment required by the regulations in this subpart.

#### § 250.442 What are the requirements for a subsea BOP stack?

(a)(1) When you drill with a subsea BOP stack, you must install the BOP system before drilling below surface casing. The District Supervisor may require you to install a subsea BOP system before drilling below the conductor casing if proposed casing setting depths or local geology indicate the need.

(2) Your subsea BOP stack must have at least four remote-controlled, hydraulically operated BOPs consisting of an annular preventer, two preventers equipped with pipe rams, and one preventer equipped with blind-shear rams.

(3) In addition to the subsea stack, you must install the associated BOP systems and equipment required by the paragraphs below and the regulations in this subpart.

(b) You must install a subsea accumulator closing unit to provide fast closure of the BOP components and to operate all critical functions in case of a loss of the power fluid connection to the surface. The subsea accumulator must meet or exceed the provisions of Section 13.3, Accumulator Volumetric Capacity, in API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells. The District Supervisor may approve a suitable alternate method.

(c) The subsea BOP system must include an operable dual-pod control system to ensure proper and independent operation of the BOP system.

(d) Before removing the marine riser, you must displace the riser with seawater. You must maintain sufficient hydrostatic pressure or take other suitable precautions to compensate for the reduction in pressure and to maintain a safe and controlled well condition.

#### § 250.443 What associated BOP systems and related equipment must my BOP system include?

(a) An accumulator system that provides 1.5 times the volume of fluid capacity necessary to close and hold closed all BOP components. The system must perform with a minimum pressure of 200 psi above the precharge pressure without assistance from a charging system. If you supply the accumulator regulators by rig air and do not have a secondary source of pneumatic supply, you must equip the regulators with manual overrides or other devices to ensure capability of hydraulic operations if rig air is lost.

(b) An automatic backup to the primary accumulator-charging system. The power source must be independent from the power source for the primary accumulator-charging system. The independent power source must possess sufficient capability to close and hold closed all BOP components.

(c) At least two BOP control stations. One station must be on the drilling floor. You must locate the other station in a readily accessible location away from the drilling floor.

(d) Side outlets on the BOP stack for separate kill and choke lines. If your stack does not have side outlets, you must install a drilling spool with side outlets.

(e) A choke and a kill line on the BOP stack. You must equip each line with two full-opening valves with at least one remote-controlled valve on each line. For a subsea BOP system, both valves in each line must be remote-controlled. In addition:

(1) You must install the choke line above the bottom ram;

(2) You may install the kill line below the bottom ram; and

(3) For a surface BOP system, you may install a check valve on the kill line instead of the remote-controlled valve. To use this check valve, both manual valves must be readily accessible, and you must install the check valve between the manual valves and the pump.

(f) A fill-up line above the uppermost preventer.

(g) Locking devices installed on the ram-type preventers.

(h) A wellhead assembly with a rated working pressure that exceeds the anticipated surface pressure.

#### § 250.444 What are the choke manifold requirements?

(a) Your BOP system must include a choke manifold that is suitable for the anticipated surface pressures, anticipated methods of well control, the surrounding environment, and the corrosiveness, volume, and abrasiveness of drilling fluids and well fluids that you may encounter.

(b) Manifold components must have a rated working pressure at least as great as the rated working pressure of the ram BOPs. If your manifold has buffer tanks downstream of choke assemblies, you must install isolation valves on any bleed lines.

(c) Valves, pipes, flexible steel hoses, and other fittings upstream of the choke

manifold must have a rated working pressure at least as great as the rated working pressure of the ram BOPs.

**§ 250.445 What are the requirements for kelly cocks, inside BOPs, and drill-string safety valves?**

You must use or provide the following BOP equipment during drilling operations:

(a) A kelly cock installed below the swivel (upper kelly cock);

(b) A kelly cock installed at the bottom of the kelly (lower kelly cock). You must be able to strip the lower kelly cock through the BOP stack;

(c) If you drill with a mud motor and use drill pipe instead of a kelly, you must install one kelly cock above, and one strippable kelly cock below, the joint of drill pipe used in place of a kelly;

(d) On a top-drive system equipped with a remote-controlled valve, you must install a strippable kelly-cock-type valve below the remote-controlled valve;

(e) An inside BOP in the open position located on the rig floor. You must be able to install an inside BOP for each size connection in the drill string;

(f) A drill-string safety valve in the open position located on the rig floor. You must have a drill-string safety valve available for each size connection in the drill string;

(g) When running casing, you must have a safety valve in the open position available on the rig floor to fit the casing string being run in the hole;

(h) All required manual and remote-controlled kelly-cock valves, drill-string safety valves, and comparable-type valves in a top-drive system must be essentially full-opening; and

(i) The drilling crew must have ready access to a wrench to fit each manual valve.

**§ 250.446 What must I do to maintain and inspect my BOP?**

(a) You must maintain your BOP system to ensure that the equipment functions properly. BOP maintenance must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practice for Blowout Prevention Equipment Systems for Drilling Wells.

(b) You must visually inspect your surface BOP system on a daily basis. You must visually inspect your subsea BOP system and marine riser at least once every 3 days if weather and sea conditions permit. You may use television cameras to inspect subsea equipment.

**§ 250.447 When must I conduct BOP system pressure tests?**

You must pressure test your BOP system (this includes the choke manifold, kelly cocks, inside BOP, and drill-string safety valve):

(a) When installed;

(b) Before 14 days have elapsed since your last BOP pressure test. You must begin to test your BOP system before midnight on the 14th day following the conclusion of the previous test. However, the District Supervisor may require more frequent testing if conditions or BOP performance warrant; and

(c) Before drilling out each string of casing or a liner. The District Supervisor may allow you to omit this test if you didn't remove the BOP stack to run the casing string or liner and the required BOP test pressures for the next section of the hole are not greater than the test pressures for the previous BOP test. You must indicate in your APD which casing strings and liners meet these criteria.

**§ 250.448 What are the BOP pressure tests requirements?**

When you pressure test the BOP system, you must conduct a low-pressure and a high-pressure test for each BOP component. You must conduct the low-pressure test before the high-pressure test. Each individual pressure test must hold pressure long enough to demonstrate that the tested component(s) holds the required pressure. Required test pressures are as follows:

(a) *Low-pressure test.* All low-pressure tests must be between 200 and 300 psi. Any initial pressure above 300 psi must be bled back to a pressure between 200 and 300 psi before starting the test. If the initial pressure exceeds 500 psi, you must bleed back to zero and reinitiate the test.

(b) *High-pressure test for ram-type BOPs, the choke manifold, and other BOP components.* The high-pressure test must equal the rated working pressure of the equipment or be 500 psi greater than your calculated maximum anticipated surface pressure (MASP) for the applicable section of hole. Before you may test BOP equipment to the MASP plus 500 psi, the District Supervisor must have approved those test pressures in your APD.

(c) *High pressure test for annular-type BOPs.* The high pressure test must equal 70 percent of the rated working pressure of the equipment.

(d) *Duration of pressure test.* Each test must hold the required pressure for 5 minutes. However, for surface BOP systems and surface equipment of a subsea BOP system, a 3-minute test duration is acceptable if you record your test pressures on the outermost half of a 4-hour chart, on a 1-hour chart, or on a digital recorder. If the equipment does not hold the required pressure during a test, you must correct the problem and retest the affected component(s).

**§ 250.449 What additional BOP testing requirements must I comply with?**

(a) Use water to test a surface BOP system;

(b) Stump test a subsurface BOP system before installation. You must use water to conduct this test. You may use drilling fluids to conduct subsequent tests of a subsea BOP system;

(c) Alternate tests between control stations and pods;

(d) Pressure test the blind or blind-shear ram during stump tests and at all casing points;

(e) The interval between any blind or blind-shear ram pressure tests may not exceed 30 days;

(f) Pressure test variable bore-pipe rams against all sizes of pipe in use, excluding drill collars and bottom-hole tools;

(g) Pressure test affected BOP components following the disconnection or repair of any well-pressure containment seal in the wellhead or BOP stack assembly;

(h) Function test annulars and rams every 7 days between pressure tests; and

(i) Actuate safety valves assembled with proper casing connections before running casing.

**§ 250.450 What are the recordkeeping requirements for BOP tests?**

You must record the time, date, and results of all pressure tests, actuations, and inspections of the BOP system, system components, and marine riser in the driller's report. In addition, you must:

(a) Record BOP test pressures on pressure charts;

(b) Require your onsite representative to certify (sign and date) BOP test charts and reports as correct;

(c) Document the sequential order of BOP and auxiliary equipment testing and the pressure and duration of each test. For subsea BOP systems, you must also record the closing times for annular and ram preventers. You may reference a BOP test plan if it is available at the facility;

(d) Identify the control station or pod used during the test;

(e) Identify any problems or irregularities observed during BOP system testing and record actions taken to remedy the problems or irregularities;

(f) Retain all records, including pressure charts, driller's report, and

referenced documents pertaining to BOP tests, actuations, and inspections at the facility for the duration of drilling; and

(g) After drilling is completed, you must retain all the records listed in this section for a period of 2 years at the facility, at the lessee's field office nearest the facility, or at another location conveniently available to the District Supervisor.

**§ 250.451 How do I remedy BOP problems and situations?**

The table in this section describes remedies to problems and situations that lessees encounter with BOP systems on a regular basis during drilling activities.

| If you have the following situation or problem: | Then you must . . . |
|---|---|
| (a) BOP equipment does not hold the required pressure during a test | Correct the problem and retest the affected equipment. |
| (b) Need to repair or replace a surface or subsea BOP system | First place the well in a safe, controlled condition (*e.g.,* before drilling out a casing shoe or after setting a cement plug, bridge plug, or a packer). |
| (c) Need to postpone a BOP test due to well-control problems such as lost circulation, formation fluid influx, or stuck drill pipe. | Record the reason for postponing the test in the driller's report and conduct the required BOP test on the first trip out of the hole. |
| (d) BOP control station or pod that does not function properly | Suspend further drilling operations until that station or pod is operable. |
| (e) Want to drill with a tapered drill-string | Install two or more sets of conventional or variable-bore pipe rams in the BOP stack to provide for the following: two sets of rams must be capable of sealing around the larger-size drill string and one set of pipe rams must be capable of sealing around the smaller-size drill string. |
| (f) Install casing rams in a BOP stack | Test the ram bonnets before running casing. |
| (g) Want to use an annular preventer with a rated working pressure less than the anticipated surface pressure. | Demonstrate that your well control procedures or the anticipated well conditions will not place demands above its rated working pressure and obtain approval from the District Supervisor. |
| (h) Use a subsea BOP system in an ice-scour area | Install the BOP stack in a glory hole. The glory hole must be deep enough to ensure that the top of the stack is below the deepest probable ice-scour depth. |
| (i) If your problem or situation is not described in this table | Contact the District Supervisor. |

## Drilling Fluid Requirements

**§ 250.455 What are the general requirements for a drilling fluid program?**

You must design and implement your drilling fluid program to prevent the loss of well control. This program must address drilling fluid safe practices, testing and monitoring equipment, drilling fluid quantities, and drilling fluid handling areas.

**§ 250.456 What are the required safe drilling fluid program practices?**

Your drilling fluid program must include the following safe practices:

(a) Before starting out of the hole with drill pipe, you must properly condition the drilling fluid. You must circulate a volume of drilling fluid equal to the annular volume with the drill pipe just off-bottom. You may omit this practice if documentation in the driller's report shows:

(1) No indication of formation fluids influx before starting to pull the drill pipe from the hole;

(2) The weight of returning drilling fluid is within 0.2 pounds per gallon (1.5 pounds per cubic foot) of the drilling fluid entering the hole; and

(3) Other drilling fluid properties are within the limits established by the program approved in the APD.

(b) Record each time you circulate drilling fluid in the hole in the driller's report;

(c) When coming out of the hole with drill pipe, you must fill the annulus with drilling fluid before the hydrostatic pressure decreases by 75 psi, or every five stands of drill pipe, whichever gives a lower decrease in hydrostatic pressure. You must calculate the number of stands of drill pipe and drill collars that you may pull before you must fill the hole. You must also calculate the equivalent drilling fluid volume needed to fill the hole. Both sets of numbers must be posted near the driller's station. You must use a mechanical, volumetric, or electronic device to measure the drilling fluid required to fill the hole;

(d) You must run and pull drill pipe and downhole tools at controlled rates so you do not swab or surge the well;

(e) When there is an indication of swabbing or influx of formation fluids, you must take appropriate measures to control the well. You must circulate and condition the well, on or near-bottom, unless well or drilling-fluid conditions prevent running the drill pipe back to the bottom;

(f) You must calculate and post near the driller's console the maximum pressures that you may safely contain under a shut-in BOP for each casing string. The pressures posted must consider the surface pressure at which the formation at the shoe would break down, the rated working pressure of the BOP stack, and 70 percent of casing burst (or casing test as approved by the District Supervisor). As a minimum, you must post the following two pressures:

(1) The surface pressure at which the shoe would break down. This calculation must consider the current drilling fluid weight in the hole; and

(2) The lesser of the BOP's rated working pressure or 70 percent of casing-burst pressure (or casing test otherwise approved by the District Supervisor);

(g) You must install an operable drilling fluid-gas separator and degasser before you begin drilling operations. You must maintain this equipment throughout the drilling of the well;

(h) Before pulling drill-stem test tools from the hole, you must circulate or reverse-circulate the test fluids in the hole. If circulating out test fluids is not feasible, you may bullhead test fluids out of the drill-stem test string and tools with an appropriate kill weight fluid; and

(i) In areas where permafrost and/or hydrate zones are present or may be present, you must control drilling fluid temperatures to drill safely through those zones.

**§ 250.457 What equipment must I have to test and monitor drilling fluids?**

(a) You must have and maintain drilling fluid-testing equipment on the drilling rig at all times. You must test the drilling fluid at least once each tour, or more frequently if conditions warrant. You must perform the tests according to industry-accepted practices. Tests must include density, viscosity, and gel strength; hydrogenion

concentration; filtration; and any other tests the District Supervisor requires. You must record the results of these tests in the drilling fluid report.

(b) Once you establish drilling fluid returns, you must install and maintain the following drilling fluid-system monitoring equipment throughout subsequent drilling operations. This equipment must have the following indicators on the rig floor:

(1) Pit level indicator to determine drilling fluid-pit volume gains and losses. This indicator must include both a visual and an audible warning device;

(2) Volume measuring device to accurately determine drilling fluid volumes required to fill the hole on trips;

(3) Return indicator devices that indicate the relationship between drilling fluid-return flow rate and pump discharge rate. This indicator must include both a visual and an audible warning device; and

(4) Gas-detecting equipment to monitor the drilling fluid returns. The indicator may be located in the drilling fluid-logging compartment or on the rig floor. If the indicators are only in the logging compartment, you must continually man the equipment and have a means of immediate communication with the rig floor. If the indicators are on the rig floor only, you must install an audible alarm.

#### § 250.458 What quantities of drilling fluids are required?

(a) You must use, maintain, and replenish quantities of drilling fluid and drilling fluid materials at the drill site as necessary to ensure well control. You must determine those quantities based on known or anticipated drilling conditions, rig storage capacity, weather conditions, and estimated time for delivery.

(b) You must record the daily inventories of drilling fluid and drilling fluid materials, including weight materials and additives in the drilling fluid report.

(c) If you do not have sufficient quantities of drilling fluid and drilling fluid material to maintain well control, you must suspend drilling operations.

#### § 250.459 What are the safety requirements for drilling fluid-handling areas?

You must classify drilling fluid-handling areas according to API RP 500, Recommended Practice for Classification of Locations for Electrical Installations at Petroleum Facilities. In areas where dangerous concentrations of combustible gas may accumulate, you must install and maintain a ventilation system and gas monitors. Drilling fluid-handling areas must have the following safety equipment:

(a) A ventilation system capable of replacing the air once every 5 minutes or 1.0 cubic feet of air-volume flow per minute, per square foot of area, whichever is greater.

In addition:

(1) If natural means provide adequate ventilation, then a mechanical ventilation system is not necessary;

(2) If a mechanical system does not run continuously, then it must activate when gas detectors indicate the presence of 1 percent or more of combustible gas by volume; and

(3) If discharges from a mechanical system may be hazardous, then you must maintain the drilling fluid-handling area at a negative pressure. You must protect the negative pressure area by using at least one of the following: a pressure-sensitive alarm, open-door alarms on each access to the area, automatic door-closing devices, air locks, or other devices approved by the District Supervisor;

(b) Gas detectors and alarms except in open areas where adequate ventilation is provided by natural means. You must test and recalibrate gas detectors quarterly. No more than 90 days may elapse between tests;

(c) Explosion-proof or pressurized electrical equipment to prevent the ignition of explosive gases. Where you use air for pressuring equipment, you must locate the air intake outside of and as far as practicable from hazardous areas; and

(d) Alarms that activate when the mechanical ventilation system fails.

### Other Drilling Requirements

#### § 250.460 What are the requirements for well testing?

(a) You must determine the presence, quantity, quality, and reservoir characteristics of oil, gas, sulphur, and water in the formations penetrated by logging, formation sampling, or well testing.

(b) If you intend to conduct a well test, you must include your projected plans for well testing with your APD (form MMS–123) or as a Sundry Notice and Reports on Wells (form MMS–124). Your plans must include at least the following information:

(1) Estimated flowing and shut-in tubing pressures;

(2) Estimated flow rates and cumulative volumes;

(3) Time duration of flow, buildup, and drawdown periods;

(4) Description and rating of surface and subsurface test equipment;

(5) Schematic drawing, showing the layout of test equipment;

(6) Description of safety equipment, including gas detectors and fire-fighting equipment;

(7) Proposed methods to handle or transport produced fluids; and

(8) Description of the test procedures.

(c) You must give the District Supervisor at least 24-hours notice before starting a well test.

#### § 250.461 What are the requirements for directional and inclination surveys?

For this subpart, MMS classifies a well as vertical if the calculated average of inclination readings does not exceed 3 degrees from the vertical.

(a) *Survey requirements for a vertical well:* (1) You must conduct inclination surveys on each vertical well and digitally record the results. Survey intervals may not exceed 1,000 feet during the normal course of drilling;

(2) You must also conduct a directional survey that provides both inclination and azimuth:

(i) Within 500 feet of setting surface or intermediate casing;

(ii) Within 500 feet of setting any liner; and

(iii) When you reach total depth.

(b) *Survey requirements for directional well:* You must conduct directional surveys on each directional well and digitally record the results. Surveys must give both inclination and azimuth at intervals not to exceed 500 feet during the normal course of drilling. Intervals during angle-changing portions of the hole may not exceed 100 feet.

(c) *Measurement while drilling.* You may use measurement-while-drilling technology if it meets the requirements of this section.

(d) *Composite survey requirements:*

(1) Your composite directional survey must show the interval from the bottom of the conductor casing to total depth. In the absence of conductor casing, the survey must show the interval from the bottom of the drive or structural casing to total depth; and

(2) You must correct all surveys to Universal-Transverse-Mercator-Grid-north or Lambert-Grid-north after making the magnetic-to-true-north correction. Surveys must show the magnetic and grid corrections used and include a listing of the directionally computed inclinations and azimuths.

(e) If you drill within 500 feet of an adjacent lease, the Regional Supervisor may require you to furnish a copy of the well's directional survey to the affected leaseholder.

**§ 250.462 What are the requirements for well-control drills?**

You must conduct a weekly well-control drill with each drilling crew. Your drill must familiarize the crew with its roles and functions so that all crew members can perform their duties promptly and efficiently.

(a) *Well-control drill plan.* You must prepare a well control drill plan that is applicable for the well. Your plan must outline the assignments for each crew member and establish times to complete each portion of the drill. You must post a copy of the well control drill plan on the rig floor or bulletin board.

(b) *Timing of drills.* You must conduct each drill during a period of activity that minimizes the risk to drilling operations. The timing of your drills must cover a range of different operations, including drilling with a diverter, on-bottom drilling, and tripping.

(c) *Recordkeeping requirements.* For each drill, you must record the following in the driller's report:

(1) The time to be ready to close the diverter or BOP system; and

(2) The total time to complete the entire drill.

(d) *MMS ordered drill.* An MMS authorized representative may require you to conduct a well control drill during an MMS inspection. The MMS representative will consult with you before requiring the drill.

**§ 250.463 Who establishes field drilling rules?**

(a) The District Supervisor may establish field drilling rules different from the requirements of this subpart when geological and engineering information shows that specific operating requirements are appropriate. You must comply with field drilling rules and nonconflicting requirements of this subpart. The District Supervisor may amend or cancel field drilling rules at any time.

(b) You may request the District Supervisor to establish, amend, or cancel field drilling rules.

**Sundry Notices and Well Records**

**§ 250.465 When must I submit sundry notices to MMS?**

(a) You must submit sundry notices (form MMS–124) and other materials to the Regional Supervisor as shown in the following table. You must also submit a public information copy of each form.

| If you . . . | then you must . . . | and . . . |
|---|---|---|
| (1) Intend to revise plans, change major drilling equipment, deepen, plug-back, or sidetrack a well. | submit form MMS–124 or request oral approval. | receive written or oral approval from the District Supervisor before you begin the intended operation. If you get an oral approval, you must submit form MMS–124 within 72 hours. In all cases, you must meet the additional requirements in paragraph (b) of this section. |
| (2) Sidetrack | submit a form MMS–124 | include the reason for the sidetrack, kickoff point, and applicable information as required for an APD (§§ 250.411 through 250.418) |
| (3) Determine that a well's final surface location, water depth, or the rotary kelly bushing elevation is different than permitted. | immediately submit a form MMS–124. | submit a plat that meets the requirements of § 250.412 |
| (4) Move a drilling unit from a wellbore before completing a well. | submit forms MMS–124 and MMS–125 (Well Summary Report) within 30 days after the suspension of wellbore operations. | submit appropriate copies of the well records. |

(b) If you intend to perform any of the actions specified in paragraph (a)(1) of this section, you must meet the following additional requirements:

(1) Your form MMS–124 must contain a detailed statement of the proposed work that will materially change from the approved APD;

(2) Your form MMS–124 must include the present status of the well, depth of all casing strings set to date, well depth, present production zones and productive capability, and all other information specified; and

(3) Within 30 days after completing this work, you must submit form MMS–124 with detailed information about the work to the District Supervisor unless you have already provided sufficient information in a weekly Activity Report, form MMS–133 (§ 250.467(c)).

**§ 250.466 What well records must I keep?**

You must keep complete, legible, and accurate records for each well. You must keep these records at your field office nearest the OCS facility or at another location conveniently available to the District Supervisor. The records must contain complete information on all of the following:

(a) Well operations;

(b) Descriptions of formations penetrated;

(c) Content and character of oil, gas, water, and other mineral deposits in each formation;

(d) Kind, weight, size, grade, and setting depth of casing;

(e) All well logs and surveys run in the wellbore;

(f) Any significant malfunction or problem; and

(g) All other information required by the District Supervisor.

**§ 250.467 What well records may I be required to submit?**

The Regional or District Supervisor may require you to submit copies of all the well records listed in this section.

(a) Well operations as specified in § 250.466.

(b) Paleontological interpretations or reports identifying microscopic fossils by depth and/or washed samples of drill cuttings that you normally maintain for paleontological determinations. The Regional Supervisor may issue a Notice to Lessees that prescribes the manner and format for this information.

(c) Daily drilling reports. For drilling operations in the GOMR, you must provide this information on a weekly basis using form MMS–133, weekly Activity Report.

(d) Service company reports on cementing, perforating, acidizing, testing, or other similar services.

(e) Other reports and records of operations.

**§ 250.468 How long must I keep drilling-related records?**

You must keep records for the time periods shown in the following table.

| You must keep records relating to . . . | until . . . |
|---|---|
| (a) Drilling | 90 days after you complete drilling operations |
| (b) Casing and liner pressure tests, diverter tests, and BOP tests | 2 years after the completion of drilling operations |
| (c) Completion of a well or of any workover activity that materially alters the completion configuration or affects a hydrocarbon-bearing zone. | you permanently plug and abandon the well or until you forward the records with a lease assignment. |

**§ 250.469 Must I submit copies of well logs?**

You must submit copies (field or final prints of individual runs) of logs or charts of electrical, radioactive, sonic, and other well-logging operations; directional-and vertical-well surveys; velocity profiles and surveys, and analysis of cores to MMS. Each Region will provide specific instructions for submitting well logs and surveys.

* * * * *

4. In § 250.515, paragraph (b) is revised to read as follows:

**§ 250.515 Blowout prevention equipment.**

* * * * *

(b) The minimum BOP system for well-completion operations must meet the appropriate standards from the following table:

| When . . . | the minimum BOP stack must include . . . |
|---|---|
| (1) The expected pressure is less than 5,000 psi | three preventers consisting of: an annular, one set of pipe rams, and one set of blind or blind-shear rams. |
| (2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings. | four preventers consisting of: an annular, two sets of pipe rams, and one set of blind or blind-shear rams. |
| (3) You handle multiple tubing strings simultaneously | four preventers consisting of: an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind or blind-shear rams. |
| (4) You use a tapered drill string | at least one set of pipe rams that are capable of sealing around each size of drill string. If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. You may substitute one set of variable bore rams for two sets of pipe rams. |
| (5) It is one year from the final rule effective date | at least one set of blind-shear rams. |

* * * * *

5. In § 250.615, paragraph (b) is revised to read as follows:

**§ 250.615 Blowout prevention equipment.**

* * * * *

(b) The minimum BOP system for well-workover operations with the tree removed must meet the appropriate standards from the following table:

| When . . . | the minimum BOP stack must include . . . |
|---|---|
| (1) The expected pressure is less than 5,000 psi | three preventers consisting of: an annular, one set of pipe rams, and one set of blind or blind-shear rams. |
| (2) The expected pressure is 5,000 psi or greater or you use multiple tubing strings. | four preventers consisting of: an annular, two sets of pipe rams, and one set of blind or blind-shear rams. |
| (3) You handle multiple tubing strings simultaneously | four preventers consisting of: an annular, one set of pipe rams, one set of dual pipe rams, and one set of blind or blind-shear rams. |
| (4) You use a tapered drill string | at least one set of pipe rams that are capable of sealing around each size of drill string. If the expected pressure is greater than 5,000 psi, then you must have at least two sets of pipe rams that are capable of sealing around the larger size drill string. You may substitute one set of variable bore rams for two sets of pipe rams. |
| (5) It is one year from the final rule effective date | at least one set of blind-shear rams. |

**Hydrogen Sulfide**

* * * * *

[FR Doc. 00–15546 Filed 6–20–00; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 166

**[CGD08–00–012]**

**RIN 2115–AA98**

## Anchorage Regulation; Sabine Pass, TX, Gulf of Mexico

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to create a new anchorage area on the eastern side of the Sabine Pass Safety Fairway, opposite the Sabine Bank Offshore (North) Anchorage area in the Gulf of Mexico south of Sabine Pass. This will help alleviate the need for in-bound deep draft vessels to cross the Sabine Pass Safety Fairway and navigate around a charted shallow area just to the southeast of the North anchorage. This proposal will allow deep draft vessels to enter and depart Sabine Bank anchorages on a safer, lower risk course.

**DATES:** Comments and related material must reach the Coast Guard on or before August 21, 2000.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety

Office, Federal Building, 2875 Jimmy Johnson Blvd., Port Arthur, Texas 77640–2099, or you may deliver comments at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (409) 723–6501. The Captain of the Port maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the same address, dates and times.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer Matthew Marlow, Waterways Management, Coast Guard Marine Safety Office Port Arthur, telephone (409) 723–6509, extension 239.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–00–012), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer U.S. Coast Guard Marine Safety Office at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

In 1997, the in-bound tank vessel CROSBY ran aground just outside the Sabine Bank Offshore (North) Anchorage area located in the Gulf of Mexico, approximately 13 miles south of Sabine Pass, TX. This vessel was carrying over 650,000 barrels of crude oil. Although no oil was spilled, the result could have been disastrous. The subsequent investigation revealed that the vessel's master crossed the safety fairway and was attempting to navigate into the North anchorage. However, a strong westerly current began pushing the CROSBY toward the shallow area southeast of the anchorage area. The master was unable to maneuver away from the shallows and the vessel grounded. Four tugboats took 15 hours to refloat the CROSBY.

The proposed new anchorage east of the Sabine Bank Offshore (North) Anchorage is necessary to reduce the risk of a grounding. The proposed location for a new anchorage is free of shallow areas immediately surrounding it. In-bound petroleum laden deep draft vessels invariably have need to anchor and wait for daylight transit. If an anchorage is created on the eastern side of the Sabine Pass Safety Fairway, deep draft vessels will not need to cross the safety fairway to anchor, and will avoid passing close to the shallow area southeast of the North anchorage. This significantly reduces navigational risks to deep draft shipping.

**Discussion of Proposed Rule**

The regulation creates a new anchorage in an area bounded by rhumb lines joining points at:

| Latitude | Longitude |
|---|---|
| 29°26′06″ N | 93°38′52″ W. |
| 29°26′06″ N | 93°37′00″ W. |
| 29°24′06″ N | 93°37′00″ W. |
| 29°24′06″ N | 93°38′52″ W. |

With this proposal, the new Sabine Bank Offshore (East) Anchorage will include deeper waters surrounding the anchorage boundaries, while maintaining an effective area of safety for deep draft vessels. This proposed regulation is designed to reduce risk of deep draft vessel groundings and promote safety of maritime commerce in the Port Arthur Captain of the Port Zone.

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

There are no fees, permits, or specialized requirements for the maritime industry to utilize this anchorage area. The regulation is solely for the purpose of advancing safety of maritime commerce.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule should have minimal economic impact on vessels operated by small entities. There are no restrictions for entry or use of the proposed anchorage targeting small entities. Fairway anchorage regulations found in 33 CFR 166.200 apply equally to large and small entities. The proposed regulation creates only a new anchorage area, it does not govern its usage. The proposed location is no farther offshore or closer to shore than the existing North anchorage.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

This proposed rule is not foreseen to affect small entities.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the entity listed in **ADDRESSES.**

**Collection of Information**

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

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

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

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

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34, of COMDTINST M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be prepared in accordance with paragraph 2.B.2, Figure 2–1, CE#34(f) of COMDTINST M16475.1C. This rule proposes creating a new anchorage area to the east of the Sabine Bank Offshore (North) Anchorage area. This new anchorage would enhance the safety in the waters offshore of Port Arthur, Texas by allowing additional space and a safer approach for deep draft vessels to anchor.

**List of Subjects in 33 CFR Part 166**

Anchorage grounds, Marine Safety, Navigation (water), Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 166 as follows:

## PART 166—SHIPPING SAFETY

1. The authority citation for part 166 continues to read as follows:

**Authority:** 33 U.S.C. 1223; 49 CFR 1.46.

2. In § 166.200, paragraph (d)(13)(iv) is added to read as follows:

**§ 166.200 Shipping safety fairways and anchorage areas, Gulf of Mexico.**

* * * * *

(d) * * *

(13) * * *

(iv) Sabine Bank Offshore (East) Anchorage Area. The area enclosed by rhumb lines joining points at:

| Latitude | Longitude |
|---|---|
| 29°26′06″ N. | 93°38′52″ W. |
| 29°26′06″ N. | 93°37′00″ W. |
| 29°24′06″ N. | 93°37′00″ W. |
| 29°24′06″ N. | 93°38′52″ W. |

Dated: May 31, 2000.

**Paul J. Pluta,**

*Commander, Eighth Coast Guard District.*

[FR Doc. 00–15514 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 300

**[FRL–6719–1]**

## National Oil and Hazardous Substances Pollution Contingency Plan, National Priorities List Update

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent for partial deletion of the Cimarron Mining Superfund Site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 6 announces its intent for partial deletion of the Cimarron Mining Superfund Site from the National Priorities List (NPL) and requests public comment on this action. All public comments regarding this proposed action will be considered by EPA. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is codified as Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. The proposed partial deletion of the Cimarron Mining Site is in accordance with 40 CFR 300.425 (e) and the Notice of Policy Change: Partial Deletion of Sites Listed on the NPL. EPA, in consultation with the New Mexico Environment Department (NMED), has determined that all appropriate response actions under CERCLA have been implemented to protect human health, welfare, and the environment at the portions of the site for which deletion is being proposed. This partial deletion includes all portions of the Cimarron Operable Unit (OU1) and the Sierra Blanca Operable Unit (OU2) except for the long-term ground water remedy at OU1.

**DATES:** Comments must be submitted by July 21, 2000.

**ADDRESSES:** Comments may be mailed to: Ms. Petra Sanchez, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6686 or (800) 533–3508.

*Information Repositories:*

Comprehensive information on the site has been compiled in a public deletion docket which may be reviewed and copied during normal business hours at the following information repositories:

U.S. EPA Region 6 Library (12th Floor) 1445 Ross Avenue Dallas, Texas 75202–2733

New Mexico Environment Department, P.O. Box 26110, 11909 St. Francis Dr., Santa Fe, New Mexico 87503

Carrizozo City Hall P.O. Box 247, Carrizozo, New Mexico 88301

**FOR FURTHER INFORMATION CONTACT:** Ms. Petra Sanchez, Remedial Project Manager (6SF–LT), U.S. Environmental Protection Agency, Region 6,1445 Ross Avenue Dallas, Texas 75202–2733 (214) 665–6686, 1–800–533–3508.

Mr. David Henry, New Mexico Environment Department, 1190 St. Francis Dr., P.O. Box 26110, Santa Fe, New Mexico 87503, (505) 827–0037.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents:**

I. Introduction
II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Intended Partial Site Deletion

### I. Introduction

This document was prepared by EPA Region 6 as Notice of Intent for Partial Deletion (Notice or NOIPD) of the Cimarron Mining Superfund Site (EPA Site Spill No. 06B5; CERCLIS No. NMD980749378), from the National

Priorities List (NPL). The NPL is the list compiled by EPA pursuant to CERCLA section 105 of uncontrolled hazardous substance release sites in the United States that are priorities for long-term remedial evaluation and response. As described in 40 CFR 300.425(e)(3) of the National Contingency Plan (NCP), sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will consider comments concerning this document which are submitted within thirty days of the date of this Notice. The EPA has also published an advertisement of the availability of this Notice in the *Albuquerque Journal* and *Lincoln County News.*

Section II of this Notice of Intent for Partial Deletion explains the National Contingency Plan criteria for deleting sites from the National Priorities List. Section III discusses procedures that EPA is using for this action. Section IV discusses the Cimarron Mining Superfund Site and explains that portions of the site meet the NCP deletion criteria.

## II. NPL Deletion Criteria

The NCP, at 40 CFR 300.425(e), provides that sites may be deleted from the NPL if no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria has been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed [1] response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If, at the site of a release, EPA selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, CERCLA subsection 121(c), 42 U.S.C. 121(c), requires that EPA review such remedial action no less often than each 5 years to ensure that human health and the environment are being protected by the remedial action. Since hazardous substances will remain at the site,[2] EPA shall conduct such reviews. If new information becomes available which indicates a need for further action, EPA may initiate further remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System (HRS).[3]

## III. Partial Deletion Procedures

EPA followed these procedures regarding the proposed partial deletion:

(1) EPA Region 6 made a determination that no further response action is necessary and that portions of the site may be deleted from the NPL;

(2) EPA has consulted with the appropriate environmental agency, the New Mexico Environment Department (NMED), and NMED concurs with EPA's partial deletion decision;

(3) EPA has published, in a major local newspaper of general circulation at or near the site, an advertisement of availability of this Notice, which includes an announcement of a 30-day public comment period regarding the Notice, and EPA distributed the Notice to appropriate State, local and Federal officials, and to other interested parties; and

(4) EPA placed copies of information supporting the proposed deletion (*i.e.,* the public deletion docket) in the site information repositories (the locations of these repositories are identified above).

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility of the site for future response actions.

EPA Region 6 will accept and evaluate public comments on this Notice before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received.

## IV. Basis for Intended Partial Site Deletion

### *A. Site Location and Description*

The Cimarron Mining Site has two operable units (OUs). The first operable unit (OU–1) is located approximately ¼ mile east of Carrizozo, Lincoln County, New Mexico, and approximately 100 miles south-southeast of Albuquerque, New Mexico. The site is about 10.6 acres in size, and is located in the NE¼ of Section 2, Township 8S, Range 10E, on the north side of Highway 380 (see Appendix A). The site consisted of a conventional agitation mill, which resulted in unpermitted discharge of contaminated liquids and the stockpiling of contaminated liquids, tailings and other waste sediment. Access to the site is restricted by an 8-foot fence. Approximately 1500 people live within a two mile radius of the site.

The Sierra Blanca Operable Unit (OU2) is located approximately one mile south of OU1 and comprises approximately 7.5 acres. The Sierra Blanca OU was designed and operated similarly to the Cimarron mill with the exception that cyanide was apparently not used at Sierra Blanca. The site file information from EPA and NMED discusses a possible spill occurring at Cimarron that most likely prompted milling operations to be relocated to Sierra Blanca in June of 1982. The Sierra Blanca milling location included two buildings, four discharge pits, one cinder block trench, a septic tank system, and numerous process tanks and material piles.

### *B. History*

The Cimarron Mining Corporation site is an inactive milling facility originally owned by Zia Steel Inc., and used to recover iron from ores transported to the site. The iron recovery process took place between the late 1960's and 1979 and involved crushing of the ore material, creating a liquid slurry by mixing with water and collecting the ferric (iron) portion of the mix by using a magnetic separator. Cyanide was not used in this original process. Tailings from the process were transported away from the site and used as fill material in local construction projects. In 1979, the site was sold to Southwest Minerals Corporation. Southwest Minerals began using cyanide soon thereafter to extract precious metals from ore. Details on the operation between 1979 and 1981 are not available other than a 1980 New Mexico Environmental Improvement Division (NMEID) sample analysis report. The report cited the presence of cyanide contamination in OU 1. Southwest Minerals, a subsidiary of Sierra Blanca Mining and Milling Company, operated at the site without the permits required for conducting cyanide processing. In mid-1981, the operation was expanded by adding several large mixing tanks, cyanide solution tanks and associated pumping and conveyance equipment. The NMEID

[1] The ''Fund'' referred to here is the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

[2] Treated soil remains on the Site at the Sierra Blanca Operable Unit (OU2). EPA considers this treated soil area to be protective of unrestricted use; i.e., residential or industrial future use nonetheless, since hazardous substances will remain on the Site, EPA is required to conduct a five-year review.

[3] The Hazardous Ranking System, Appendix A to 40 CFR part 300, is the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

sent a certified notice of violation to the property owner on June 22, 1982, for discharging into a non-permitted discharge pit and, in July 1982, the site ceased operation. No legal action was taken by the State; the company filed for bankruptcy in July 1983, and a court assigned bankruptcy trustee was appointed for the site.

Field inspections of the site by NMEID in February 1980, June 1982, and in May and June 1984, revealed the presence of cyanide and elevated metals in shallow ground water, soil and mill tailings. An Expanded Site Inspection (ESI) was conducted from January to October 1987 by an EPA Field Investigation Team (FIT). The objective of the ESI was to collect additional data for the Hazard Ranking System (HRS) and to facilitate the Remedial Investigation/Feasibility Study (RI/FS) planning.

On-site activities performed during the ESI included surface and subsurface soil sampling, visual inspection of process tanks, sampling of remnant materials in the tanks, quantifying waste volumes, sampling and geologically describing subsurface soil borings during installation of monitoring wells, sampling ground water in the monitoring wells and in nearby water supply wells, testing insitu permeability at the monitor wells, and identifying adjacent land uses.

Based on the findings of site investigations and the preparation of the HRS package, the Cimarron Mining Corporation Site was proposed for addition to the National Priorities List (NPL) on June 24, 1988, and finalized on October 4, 1989.

The OU1 selected remedy for ground water treatment consists of extracting contaminated shallow ground water and discharging to the City of Carrizozo sewage treatment plant, meeting all pretreatment requirements prior to discharge. Ground water treatment in OU1 will continue as long as it demonstrates effective, or, until the site is taken over by the state in 2004. The OU2 selected remedy includes the excavation and treatment of arsenic and lead contaminated soils by mixing the soils with cement and placing them in the on-site discharge pit with a native soil cover and native re-vegetation. Pursuant to section 104(c)(6) of CERCLA, EPA is authorized to share the cost of restoration of the ground water for a period of up to ten years or until the level of protectiveness, as defined in the Record of Decision, is achieved. The ten-year period began when the ground water remedy at the Cimarron Unit became operational and functional and adheres to the statutory provisions in 40 CFR 300.435(f)(3) and 300.435(f)(4). Based on mutual agreement between EPA and NMED, the ground water extraction and treatment system was deemed operational and functional beginning January 30, 1994.

*C. Characterization of Risk*

Due to remedial actions by EPA and NMED, and the long term remedial action for contaminated ground water, EPA verifies the implemented remedy for the portions of the site proposed to be deleted is protective of human health and the environment.

*D. Community Involvement*

Public participation activities have been satisfied as required in CERCLA subsection 113(k), 42 U.S.C. 9613(k), and in CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket on which EPA relied for recommendation of the site partial deletion from the NPL have been made available to the public in the three information repositories as specified above.

*E. Proposed Action*

In consultation with NMED, EPA has concluded that all appropriate response actions required at portions of the site proposed to be deleted have been met. Neither the CERCLA-required five-year reviews nor operation and maintenance of the ground water remedy are considered further response action for these purposes. The ground water remedy for OU 1, which is the portion of the site not being proposed for deletion, will continue until the remedial action level for cyanide has been met or an alternate treatment and/or remedial action level is selected by EPA and the State.

In a letter dated January 25, 1999, NMED formally concurred with the partial deletion of the site and stated NMED's satisfaction with all completed remedial tasks as defined in the ROD. Moreover, EPA, in consultation with NMED, has determined that site surface soils at both OU 1 (Cimarron) and OU 2 (Sierra Blanca) now pose no significant threat to public health or the environment and that the Sierra Blanca site is suitable for future redevelopment. Consequently, EPA proposes this partial deletion of the Cimarron Mining Superfund Site.

Dated: May 31, 2000.

**Lynda Carroll,**

*Acting Regional Administrator, EPA Region 6.*

[FR Doc. 00–15393 Filed 6–20–00; 8:45 am]

BILLING CODE 6560–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 67

**[Docket No. FEMA–7311]**

## Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

**DATES:** The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

**ADDRESSES:** The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472; (202) 646–3461, or (email) matt.miller@fema.gov.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other

Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

**National Environmental Policy Act**

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

**Regulatory Classification**

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

**Executive Order 12612, Federalism**

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

**Executive Order 12778, Civil Justice Reform**

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

## PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Florida | Daytona Beach (City), Volusia County. | Atlantic Ocean | Approximately 450 feet northeast of the intersection of Harvey Avenue and Ocean Avenue South. | *11 | *10 |
| | | | Approximately 300 feet east of the intersection of Hartford Avenue and Atlantic Avenue North. | *9 | *13 |
| | | Intracoastal Waterway | Approximately 500 feet west of the intersection of Glenview Boulevard and Halifax Avenue North. | *6 | *5 |
| | | | Approximately 700 feet east of the intersection of San Juan Avenue and North Beach Street. | *7 | *8 |
| | | B–19 Canal Tributary No. 7. | At confluence with B–19 Canal | *28 | *30 |
| | | | Approximately 50 feet upstream of Beville Road/State Route 400. | *28 | *30 |
| | | B–19 Canal | Approximately 1,100 feet upstream of the confluence of B–19 Canal Tributary No. 3 with B–19 Canal. | *28 | *29 |
| | | | Approximately 100 feet upstream of State Route 400. | *28 | *30 |
| | | Tomoka River | Approximately 0.8 mile downstream of Eleventh Street. | *13 | *14 |
| | | | Approximately 400 feet downstream of Interstate 4. | *26 | *25 |

Maps available for inspection at the Daytona Beach Public Works Complex, Engineering Department, 950 Bellevue Avenue, Daytona Beach, Florida.

Send comments to Mr. Carey F. Smith, Dayton Beach City Manager, P.O. Box 2451, Daytona Beach, Florida 32115.

| | | | | | |
|---|---|---|---|---|---|
| Florida | Dayton Beach Shores (City), Volusia County. | Atlantic Ocean | Approximately 400 feet east of the intersection of Ridge Road and Atlantic Avenue South. | None | *10 |
| | | | Approximately 500 feet east of the intersection of Van Avenue and Atlantic Avenue South. | *11 | *12 |
| | | Intracoastal Waterway | Approximately 400 feet west of the intersection of Richards Lane and Peninsula Drive South. | *7 | *6 |
| | | | At the intersection of Demott Street and Peninsula Drive South. | None | *6 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the City of Daytona Beach Shores City Hall, Building Division, 3050 South Atlantic Avenue, Daytona Beach, Florida. | | | | | |
| Send comments to Ms. Nancy Farr, Dayton Beach Shores City Manager, 3050 South Atlantic Avenue, Daytona Beach Shores, Florida 32118. | | | | | |
| Florida | Edgewater (City), Volusia County. | Indian River North/Intracoastal Waterway. | Just on the easterly side of the intersection of Boston Road and Riverside Drive. | *8 | *7 |
| | | | Approximately 100 feet east of the intersection of Knapp Avenue and Riverside Drive South. | *8 | *9 |
| Maps available for inspection at the City of Edgewater Planning Department, 104 North Riverside Drive, Edgewater, Florida. | | | | | |
| Send comments to The Honorable Randy Allmon, Mayor of the City of Edgewater, P.O. Box 100, Edgewater, Florida 32132–0100. | | | | | |
| Florida | Holly Hill (City), Volusia County. | Intracoastal Waterway | At the intersection of High Street and Burleigh Avenue. | None | *6 |
| | | | Approximately 100 feet east of the intersection of 15th Place and Riverside Drive. | *6 | *7 |
| Maps available for inspection at the Holly Hill City Hall, 1065 Ridgewood Avenue, Holly Hill, Florida. | | | | | |
| Send comments to The Honorable William Arthur, Mayor of the City of Holly Hill, 1065 Ridgewood Avenue, Holly Hill, Florida 32117. | | | | | |
| Florida | New Smyrna Beach (City), Volusia County. | Atlantic Ocean | Approximately 400 feet east of the intersection of 3rd Avenue East and Atlantic Avenue South. | None | *10 |
| | | | Approximately 0.8 mile north of the intersection of Peninsula Avenue North and Ocean Drive. | None | *12 |
| | | Indian River North/Intracoastal Waterway. | At the intersection of Ocean Drive and Peninsula Avenue North. | None | *7 |
| | | | Approximately 1,500 feet east of the intersection of Conrad Drive and Redland Drive. | *7 | *9 |
| Maps available for inspection at the New Smyrna City Hall, 210 Sams Avenue, New Smyrna Beach, Florida. | | | | | |
| Send comments to The Honorable James Vandergrifft, Mayor of the City of New Smyrna Beach, 210 Sams Avenue, New Smyrna Beach, Florida 32117. | | | | | |
| Florida | Oak Hill (City), Volusia County. | Atlantic Ocean | Approximately 120 feet east of the intersection of State Route A1A and Volusia County/Oak Hill corporate limits. | None | *11 |
| | | | Approximately 500 feet from the southern Volusia County/Oak Hill corporate limits along State Route A1A north, then approximately 350 feet east. | *11 | *12 |
| | | Indian River North/Intracoastal Waterway. | Approximately 1,500 feet southwest of the intersection of South Street and State Route A1A in Volusia County. | None | *6 |
| | | | Approximately 500 feet east of the intersection of Cheyenne Drive and Golden Bay Boulevard. | *6 | *8 |
| Maps available for inspection at the Oak Hill City Hall, 234 South U.S. Highway 1, Oak Hill, Florida. | | | | | |
| Send comments to The Honorable Donna Bennett, Mayor of the City of Oak Hill, 234 South U.S. Highway 1, Oak Hill, Florida 32759. | | | | | |
| Florida | Ponce Inlet (Town), Volusia County. | Atlantic Ocean | Approximately 300 feet east of the intersection of Old Carriage Road and Atlantic Avenue South. | *9 | *10 |
| | | | Approximately 750 feet east of the Beach Street and Atlantic Avenue South intersection. | *11 | *12 |
| | | Intracoastal Waterway | At the intersection of Maura Court and Peninsula Drive South. | None | *7 |
| | | | Approximately 2,500 feet south of the intersection of Beach and Sailfish Drive. | *8 | *9 |
| Maps available for inspection at the Ponce Inlet Town Hall, 4680 South Peninsula Drive, Ponce Inlet, Florida. | | | | | |
| Send comments to The Honorable Chuck Strott, Mayor of the Town of Ponce Inlet, 4680 South Peninsula Drive, Ponce Inlet, Florida 32127. | | | | | |
| Florida | Port Orange (City), Volusia County. | B–19 Canal | Approximately 300 feet upstream of confluence with Spruce Creek. | *6 | *5 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 150 feet downstream of the confluence of B–19 Canal Tributary No. 5 with B–19 Canal. | *28 | *29 |
| | | B–19 Canal | At the confluence with B–19 Canal | *26 | *28 |
| | | Tributary No. 2 | Approximately 1,500 feet upstream of confluence with B–19 Canal. | *27 | *28 |
| | | Intracoastal Waterway | At the intersection of Riverview Lane and Simpson Avenue. | *7 | *6 |
| | | | At the intersection of Portobello Drive and Riverside Drive. | *8 | *9 |
| Maps available for inspection at the Port Orange City Hall, 1000 City Center Circle, Port Orange, Florida. | | | | | |
| Send comments to The Honorable Allen Green, Mayor of the City of Port Orange, 1000 City Center Circle, Port Orange, Florida 32119. | | | | | |
| Florida | Ormond Beach (City), Volusia County. | Atlantic Ocean | Approximately 350 feet east of the intersection of Ann Rustin Drive and Ocean Shore Boulevard. | *9 | *10 |
| | | | Approximately 600 feet east of the intersection of Harvard Drive and Florence Street. | *11 | *12 |
| | | Halifax River/Intracoastal Waterway. | At the intersection of John Anderson Drive and St. Mark Circle. | None | *4 |
| | | | Approximately 100 feet east of the intersection of Seville Street and Beach Street South. | *5 | *7 |
| | | | Approximately 200 feet west of intersection of John Anderson Drive and Buckingham Drive. | *5 | *4 |
| | | Tomoka River | Approximately 1.1 miles downstream of confluence of Thompson Creek. | *4 | *5 |
| | | | Approximately 1,500 feet upstream of State Route 40. | *7 | *10 |
| | | Misner Branch | At confluence with Tomoka River | *6 | *8 |
| | | | Approximately 100 feet upstream of Handy Avenue. | None | *15 |
| | | Little Tomoka River | At confluence with Tomoka River | *7 | *10 |
| | | | At State Route 40 | None | *28 |
| | | Groover Branch | At confluence with Tomoka River approximately 1,300 feet downstream of Tymber Run Road. | None | *20 |
| | | | Approximately 340 feet upstream of Tymber Creek Road North. | *7 | *10 |
| | | Thompson Creek | Approximatey 470 feet downstream of U.S. Route 1 North. | *5 | *7 |
| | | | Approximately 0.45 mile upstream of Tomoka Avenue. | None | *8 |
| Maps available for inspection at the Ormond Beach City Hall, Planning Department, 22 South Beach Street, Room 104, Ormond Beach, Florida. | | | | | |
| Send comments to The Honorable David Hood, Mayor of the City of Ormond Beach, P.O. Box 277, Ormond Beach, Florida 32175–0277. | | | | | |
| Florida | South Daytona (City), Volusia County. | Intracoastal Waterway | At the intersection of Sea Isle Circle and Palmetto Avenue. | *7 | *6 |
| | | | Approximately 600 feet east of the intersection of Venture Drive and U.S. Route 1 (Ridgewood Avenue South). | *9 | *8 |
| | | | Approximately 125 feet southwest of the intersection of Reed Canal Road and Ridgewood Avenue South/U.S. Route 1. | None | *6 |
| Maps available for inspection at the South Daytona City Hall, 1672 Ridgewood Avenue, South Daytona, Florida. | | | | | |
| Send comments to The Honorable Joseph Piggotte, Mayor of the City of South Daytona, P.O. Box 214960, South Daytona, Florida 32121. | | | | | |
| Florida | Volusia County (Unincorporated Areas). | Atlantic Ocean | Approximately 350 feet east of the intersection of Plaza Drive and Ocean Shore Boulevard None. | None | *10 |
| | | | Approximately 300 feet southeast of the intersection of Kingfish Avenue and Atlantic Avenue South. | None | *12 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 500 feet southeast of intersection of Ocean Shore Boulevard and northern county boundary. | *13 | *12 *12 |
| | | Halifax River/Intracoastal Waterway. | Approximately 100 feet southwest of the intersection of John Anderson Drive and Highridge Road. | None | *4 |
| | | | Approximately 2,750 feet west of intersection of Cardinal Boulevard and Major Street. | *7 | *9 |
| | | Indian River North/Intracoastal Waterway. | Approximately 1,000 feet east of intersection of Pelican Place and Riverside Drive. | *9 | *7 |
| | | | Approximately 50 feet west of the intersection of Trout Avenue and Atlantic Avenue. | *7 | *6 |
| | | Groover Branch | Approximately 1,250 feet upstream of Tymber Run. | None | *10 |
| | | | Approximately 340 feet upstream of Tymber Creek Road North. | None | *20 |
| | | Tomoka River | Approximately 1.17 miles downstream of confluence of Thompson Creek. | *4 | *5 |
| | | | Approximately 0.96 mile upstream of U.S. Route 92. | *26 | *25 |
| | | Little Tomoka River | At confluence with Tomoka River, approximately 1,850 feet downstream of Main Trail Road. | None | *10 |
| | | | Approximately 200 feet upstream of State Route 40. | None | *30 |
| | | B–19 Canal | At the confluence of B–19 Canal Tributary No. 2. | *26 | *28 |
| | | | Approximately 550 feet northeast of the confluence of B–19 Canal Tributary No. 3 with B–19 Canal. | *28 | *29 |
| | | Crescent Lake | Approximately 6,000 feet northeast of the intersection of Ducan Road and Raulerson Road No. 7. | None | *7 |
| | | | Approximately 2.84 miles northeast of the intersection of Ducan Road and Raulerson Road No. 7 | None | *7 |
| | | B–19 Canal Tributary No. 2. | Approximately 50 feet upstream of confluence with B–19 Canal. | *26 | *28 |
| | | | Approximately 650 feet upstream of confluence with B–19 Canal | *27 | *28 |
| Maps available for inspection at the Volusia County Emergency Operations Center, 49 Keyton Drive, Daytona, Florida. | | | | | |
| Send comments to Mr. Lawrence Arrington, Volusia County Manager, 123 West Indiana Avenue, Deland, Florida 32720–4612. | | | | | |
| Illinois | LaSalle (City), LaSalle County. | Illinois River | Approximately 0.82 mile downstream of State Route 351. | *462 | *463 |
| | | | Approximately 0.95 mile upstream of Illinois Central Railroad | *463 | *465 |
| Maps available for inspection at the LaSalle City Hall, 745 Second Street, LaSalle, Illinois. | | | | | |
| Send comments to The Honorable Arthur Washkowiak, Mayor of the City of LaSalle, 745 Second Street, LaSalle, Illinois 61301. | | | | | |
| Illinois | Marseilles (City), LaSalle County. | Illinois River | Approximately 4,200 feet downstream of Main Street. | None | *479 |
| | | | Approximately 15,500 feet upstream of Main Street | None | *492 |
| Maps available for inspection at the Marseilles City Hall, 209 Lincoln Street, Marseilles, Illinois. | | | | | |
| Send comments to The Honorable John C. Knudson, Mayor of the City of Marseilles, 209 Lincoln Street, Marseilles, Illinois 61341. | | | | | |
| Illinois | Millington (Village), LaSalle County. | Fox River | Approximately 1.6 miles upstream of Interstate 80. | *555 | *553 |
| | | | Approximately 400 feet upstream of confluence of Clear Creek | *557 | *555 |
| | | Clear Creek | At confluence with the Fox River | *557 | *556 |
| | | | At the Burlington Northern Railroad | *557 | *556 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Millington Village Hall, Walnut Street, Millington, Illinois. Send comments to Ms. Janet Blue, Millington Village President, Walnut Street, P.O. Box 371, Millington, Illinois 60537. | | | | | |
| Illinois | North Utica (Village), LaSalle County. | Clark Run Creek | Approximately 0.46 mile downstream of crossing of the abandoned Illinois and Michigan Canal. | *465 | *466 |
| | | | Approximately 700 feet downstream of confluence of the abandoned Illinois and Michigan Canal | *465 | *466 |
| | | Illinois River | Approximately 0.38 mile downstream of State Route 178. | *464 | *466 |
| | | | Approximately 0.55 mile upstream of State Route 178 | *465 | *466 |
| Maps available for inspection at the North Utica Village Hall, 245 Johnson Street, Utica, Illinois. Send comments to Mr. Joseph M. Carey, North Utica Village President, 245 Johnson Street, Utica, Illinois 61373. | | | | | |
| Illinois | Ottawa (City), LaSalle County. | Goose Creek | Approximately 400 feet downstream of Champlain Street. | *476 | *472 |
| | | | Approximately 150 feet upstream of Champlain Street | *476 | *475 |
| | | Illinois River | Approximately 0.4 mile downstream of Burlington Northern Railroad. | *472 | *471 |
| | | | Approximately 4,400 feet upstream of confluence of Fox River | None | *473 |
| | | Fox River | Approximately 500 feet upstream of confluence with the Illinois River. | *473 | *472 |
| | | | Approximately 0.98 mile upstream of confluence of Goose Creek | None | *474 |
| Maps available for inspection at the Ottawa City Hall, 301 West Madison Street, Ottawa, Illinois. Send comments to The Honorable Robert M. Eschbach, Mayor of the City of Ottawa, Ottawa City Hall, 301 West Madison Street, Ottawa, Illinois 61350. | | | | | |
| Illinois | Peru (City), LaSalle County. | Illinois River | Approximately 7,350 feet downstream of State Route 251. | *461 | *462 |
| | | | A point approximately 2,600 feet upstream of State Route 251 | *462 | *463 |
| Maps available for inspection at the Peru City Clerk's Office, 1727 Fourth Street, Peru, Illinois. Send comments to The Honorable Donald L. Baker, Mayor of the City of Peru, P.O. Box 299, Peru, Illinois 61354. | | | | | |
| Illinois | Seneca (Village), LaSalle County. | Illinois River | Approximately 1.1 miles downstream of South Main Street (State Route 170). | None | *94 |
| | | | Approximately 400 feet upstream of upstream county boundary | *498 | *497 |
| | | Rat Run | Approximately 2,750 feet downstream of Main Street (State Route 170). | *492 | *494 |
| | | | Approximately 1,000 feet downstream of Main Street (State Route 170) | *493 | *494 |
| Maps available for inspection at the Seneca Village Hall, 116 West Williams Street, Seneca, Illinois. Send comments to The Honorable David Yeck, Mayor of the Village of Seneca, 116 West Williams Street, Seneca, Illinois 61360. | | | | | |
| Illinois | Sheridan (Village), LaSalle County. | Fox River | At the downstream corporate limits | None | *542 |
| | | | Approximately 1,725 feet upstream of North 41st Road | None | *545 |
| Maps available for inspection at the Sheridan Village Hall, Engineer's Office, Robinson Street, Sheridan, Illinois. Send comments to The Honorable James D. Allen, Mayor of the Village of Sheridan, P.O. Box 222, Sheridan, Illinois 60551. | | | | | |
| Illinois | Winnebago County (Unincorporated Areas). | Manning Creek | At confluence with Kishwaukee River | None | *729 |
| | | | Approximately 0.52 mile upstream of Lyford Road. | None | *857 |
| | | Unnamed Tributary to South Kent Creek. | Just downstream of U.S. Route 20 | None | *765 |
| | | | Approximately 1,600 feet upstream of Frontage Road. | None | *782 |
| | | Kishwaukee River | Just upstream of Interstate 90 | None | *729 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1,400 feet upstream of Interstate 90. | None | *729 |
| Maps available for inspection at the Winnebago County Highway Department, 424 North Springfield Road, Rockford, Illinois. | | | | | |
| Send comments to Ms. Christine Cohn, Chairman of the Winnebago County Board of Supervisors, 404 Elm Street, Rockford, Illinois 61101. | | | | | |
| New York | Prospect (Village), Oneida County. | West Canada Creek | At Military Road | None | *1,078 |
| | | | Approximately 2,030 feet upstream of Military Road. | None | *1,127 |
| Maps available for inspection at the Prospect Village Office, 915 Trenton Falls Street, Prospect, New York. | | | | | |
| Send comments to The Honorable Donald Bishop, Mayor of the Village of Prospect, P.O. Box 159, Prospect, New York 13435. | | | | | |
| Ohio | Lucas County (Unincorporated Areas). | Drennan Ditch | Approximately 1,260 feet downstream of Private Drive. | *629 | *634 |
| | | | At Private Drive | *632 | *634 |
| Maps available for inspection at the Lucas County Engineering Office, One Government Center, Suite 870, Toledo, Ohio. | | | | | |
| Send comments to Ms. Sandy Isenburg, President of the Lucas County Board of Commissioners, One Government Center, Suite 800, Toledo, Ohio 43604. | | | | | |
| Pennsylvania | Allen (Township), Northampton County. | Lehigh River | Approximately 1.03 miles upstream of State Route 329. | *302 | *304 |
| | | | Approximately 1.02 miles downstream of State Route 145. | *323 | *321 |
| | | Catasauqua Creek | A point approximately 0.52 mile downstream of dam. | None | *303 |
| | | | Approximately 150 feet upstream of Private Road. | None | *326 |
| | | Hokendauqua Creek | Approximately 0.4 mile downstream of State Route 329. | None | *321 |
| | | | Approximately 1,320 feet upstream of State Route 329. | None | *329 |
| Maps available for inspection at the Allen Township Hall, 4714 Indian Trail Road, Northampton, Pennsylvania. | | | | | |
| Send comments to Mr. Paul Balliet, Chairman of the Township of Allen Board of Supervisors, 4714 Indian Trail Road, Northampton, Pennsylvania 18067. | | | | | |
| Pennsylvania | Bethelehem (City), Northampton County. | Lehigh River | Just downstream of Freemansburg Highway bridge. | *224 | *223 |
| | | | Approximately 0.18 mile upstream of CONRAIL Railroad. | *239 | *236 |
| | | Saucon Creek | At the confluence of Lehigh River | *226 | *224 |
| | | | At the centerline of Friedensville Road | *276 | *277 |
| Maps available for inspection at the Bethlehem City Hall, Planning Office, 10 East Church Street, Bethlehem, Pennsylvania. | | | | | |
| Send comments to The Honorable Donald T. Cunningham, Jr., Mayor of the City of Bethlehem, 10 East Church Street, Bethlehem, Pennsylvania 18018. | | | | | |
| Pennsylvania | Bethlehem (Township), Northampton County. | Lehigh River | Approximately 1.97 miles upstream of Chain Dam. | *209 | *210 |
| | | | Approximately 0.8 mile downstream of Freemansburg Highway bridge. | *220 | *221 |
| Maps available for inspection at the Bethlehem Township Municipal Building, 4225 Easton Avenue, Bethlehem, Pennsylvania. | | | | | |
| Send comments to Mr. Jeff J. Bartlett, Acting Bethlehem Township Manager, 4225 Easton Avenue, Bethlehem, Pennsylvania 18020. | | | | | |
| Pennsylvania | Dingman (Township), Pike County. | Delaware River | Approximately 3.0 miles downstream of U.S. Route 206. | None | *391 |
| | | | Approximately 1.0 mile upstream of U.S. Route 206. | None | *403 |
| Maps available for inspection at the Dingman Township Hall, 118 Fisher Lane, Milford, Pennsylvania. | | | | | |
| Send comments to Mr. Dennis Brink, Chairman of the Township of Dingman Board of Supervisors, 118 Fisher Lane, Milford, Pennsylvania 18337. | | | | | |
| Pennsylvania | East Allen (Township), Northampton County. | Monocacy Creek | Downstream of Mill Street | None | *406 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1,000 feet downstream of Mill Street. | None | *406 |
| Maps available for inspection at the East Allen Township Offices, 5344 Nor-Bath Boulevard, Northampton, Pennsylvania. | | | | | |
| Send comments to Mr. Roger Unangst, Chairman of the Township of East Allen Board of Supervisors, 5344 Nor-Bath Boulevard, Northampton, Pennsylvania 18067. | | | | | |
| Pennsylvania | Easton (City), Northampton County. | Lehigh River | Approximately 528 feet downstream of Easton Dam. | *192 | *195 |
| | | | Approximately 1.55 miles upstream of Chain Dam. | *209 | *208 |
| | | Delaware River | Approximately 1 mile upstream of Interstate 78. | *188 | *191 |
| | | | Approximately 1.23 miles upstream of confluence with Bushkill Creek. | *198 | *199 |
| Maps available for inspection at the Easton City Hall, 1 South Third Street, Easton, Pennsylvania. | | | | | |
| Send comments to The Honorable Thomas F. Goldsmith, Mayor of the City of Easton, 1 South Third Street, Easton, Pennsylvania 18042. | | | | | |
| Pennsylvania | Forks (Township), Northampton County. | Delaware River | Approximately 1.16 miles upstream of confluence with Bushkill Creek. | *198 | *199 |
| | | | Approximately 0.54 mile downstream of confluence with Mud Run. | *207 | *206 |
| Maps available for inspection at the Forks Township Hall, 1606 Sullivan Trail, Easton, Pennsylvania. | | | | | |
| Send comments to Mr. David Hoff, Chairman of the Township of Forks Board of Supervisors, 1606 Sullivan Trail, Easton, Pennsylvania 18040. | | | | | |
| Pennsylvania | Freemansburg (Borough), Northampton County. | Lehigh River | Approximately 420 feet upstream of confluence with Nancy Creek. | *221 | *222 |
| | | | Approximately 1.26 miles downstream of confluence with Monocacy Creek. | *229 | *226 |
| Maps available for inspection at the Freemansburg Borough Hall, 600 Monroe Street, Freemansburg, Pennsylvania. | | | | | |
| Send comments to The Honorable Gerald Yob, Mayor of the Borough of Freemansburg, 600 Monroe Street, Freemansburg, Pennsylvania 18017. | | | | | |
| Pennsylvania | Glendon (Borough), Northampton County. | Lehigh River | Approximately 0.31 mile downstream of Glendon Parkway. | *194 | *195 |
| | | | Approximately 0.27 mile upstream of Chain Dam. | *204 | *203 |
| Maps available for inspection at the Glendon Borough Hall, 24 Franklin Street, Easton, Pennsylvania. | | | | | |
| Send comments to The Honorable Charles Seip, Mayor of the Borough of Glendon, 24 Franklin Street, Easton, Pennsylvania 18042. | | | | | |
| Pennsylvania | Greene (Township), Pike County. | Lake Wallenpaupack | Entire shoreline within community | None | *1,191 |
| Maps available for inspection at the Greene Township Building, Brink Hill Road, Greentown, Pennsylvania. | | | | | |
| Send comments to Ms. Maryann Hubbard, Chairman of the Township of Greene Board of Supervisors, P.O. Box 243, Greentown, Pennsylvania 18426. | | | | | |
| Pennsylvania | Hellertown (Borough), Northampton County. | Saucon Creek | Approximately 1,435 feet downstream of confluence of Black River. | *259 | *260 |
| | | | Approximately 540 feet downstream of Meadows Road. | *298 | *296 |
| Maps available for inspection at the Hellertown Borough Municipal Building, 685 Main Street, Hellertown, Pennsylvania. | | | | | |
| Send comments to Mr. James Sigworth, Hellertown Borough Manager, 685 Main Street, P.O. Box A, Hellertown, Pennsylvania 18055—0222. | | | | | |
| Pennsylvania | Lehigh (Township), Northampton County. | Lehigh River | Approximately 1.02 miles downstream of State Route 145. | *322 | *321 |
| | | | At the county boundary | *387 | *388'≤ |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Lehigh Township Municipal Building, 1069 Municipal Road, Walnutport, Pennsylvania. | | | | | |
| Send comments to Mr. Richard Demko, Chairman of the Lehigh Township Board of Supervisors, 1609 Municipal Road, Walnutport, Pennsylvania 18088. | | | | | |
| Pennsylvania | Lehman (Township), Pike County. | Delaware River | Approximately 0.51 mile upstream of confluence of Bushkill Creek. | None | *349 |
| | | | Approximately 1.4 miles upstream of confluence of Bushkill Creek. | None | *354 |
| Maps available for inspection at the Lehman Zoning Office, Municipal Road, Bushkill, Pennsylvania.'≤ | | | | | |
| Send comments to Mr. Walter Bensky, Chairman of the Lehman Township Board of Supervisors, RR 4, Box 4000, Bushkill, Pennsylvania 18324. | | | | | |
| Pennsylvania | Lower Mount Bethel (Township), Northampton County. | Delaware River | Approximately 0.44 mile downstream of confluence with Mud Run. | *206 | *207 |
| | | | Just downstream of the Riverton-Belvidere Highway bridge. | *256 | *255 |
| Maps available for inspection at the Lower Mount Bethel Township Hall, 6984 South Delaware Drive, Martins Creek, Pennsylvania. | | | | | |
| Send comments to Mr. Anthony Gasparetti, Chairman of the Lower Mount Bethel Township Board of Supervisors, P.O. Box 257, Martins Creek, Pennsylvania 18063. | | | | | |
| Pennsylvania | Lower Saucon (Township), Northampton County. | Lehigh River | Approximately 1.61 miles upstream of Chain Dam. | *208 | *209 |
| | | | Just upstream of Freemansburg Highway bridge. | *222 | *223 |
| | | Saucon Creek | Approximately 50 feet upstream of Friedensville Road. | *277 | *278 |
| | | | At the county boundary | *333 | *337 |
| Maps available for inspection at the Lower Saucon Township Hall, 3700 Old Philadelphia Pike, Bethlehem, Pennsylvania. | | | | | |
| Send comments to Mr. Jeffrey Zettlemoyer, Assistant Lower Saucon Township Manager, 3700 Old Philadelphia Pike, Bethlehem, Pennsylvania 18015. | | | | | |
| Pennsylvania | Matamoras (Borough), Pike County. | Delaware River | Approximately 355 feet downstream of State Route 84. | *434 | *426 |
| | | | Approximately 3,020 feet upstream of Pennsylvania Avenue. | *443 | *440'≤ |
| Maps available for inspection at the Matamoras Borough Hall, Avenue I, Matamoras, Pennsylvania. | | | | | |
| Send comments to Mr. David Hazen, Matamoras Borough President, P.O. Box 207, Matamoras, Pennsylvania 18336. | | | | | |
| Pennsylvania | Milford (Borough), Pike County. | Delaware River | Approximately 1.0 mile upstream of U.S. Route 206. | None | *403 |
| | | | Approximately 1.5 miles upstream of U.S. Route 206. | None | *405 |
| Maps available for inspection at the Milford Borough Office, 111 West Catherine Street, Milford, Pennsylvania. | | | | | |
| Send comments to Mr. Matthew Osperberg, President of the Borough of Milford, 111 West Catherine Street, Milford, Pennsylvania 18337. | | | | | |
| Pennsylvania | Milford (Township), Pike County. | Delaware River | Approximately 1.5 miles upstream of U.S. Route 206. | None | *405 |
| | | | Approximately 2.7 miles upstream of U.S. Route 206. | None | *409 |
| Maps available for inspection at the Milford Township Office, 590 Route 6 and 209, Milford, Pennsylvania. | | | | | |
| Send comments to Mr. Donald Quick, Chairman of the Township of Milford Board of Supervisors, P.O. Box 366, Milford, Pennsylvania 18337. | | | | | |
| Pennsylvania | North Catasauqua (Borough), Northampton County. | Lehigh River | At the county boundary | *280 | *281 |
| | | | Approximately 1,900 feet downstream of confluence with Dry Run. | *285 | *287 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the North Catasauqua Borough Hall, 1066 Fourth Street, North Catasauqua, Pennsylvania. | | | | | |
| Send comments to Mr. Joseph Keglovits, President of the Borough of North Catasauqua, 1066 Fourth Street, Catasauqua, Pennsylvania 18032. | | | | | |
| Pennsylvania | North Whitehall (Township), Lehigh County. | Fells Creek | At the confluence with the Lehigh River | *318 | *315 |
| | | | A point approximately 750 feet upstream of Neffs-Laurys Road. | None | *546 |
| Maps available for inspection at the North Whitehall Township Municipal Building, 3256 Levans Road, Coplay, Pennsylvania. | | | | | |
| Send comments to Ms. Janet Talotta, Chairman of the North Whitehall Township Board of Supervisors, 3256 Levans Road, Coplay, Pennsylvania 18037. | | | | | |
| Pennsylvania | Northampton (Borough), Northampton County. | Lehigh River | Approximately 1,900 feet downstream of confluence with Dry Run. | *285 | *287 |
| | | | Approximately 1.16 miles upstream of Route 329. | *302 | *305 |
| Maps available for inspection at the Northampton Borough Municipal Office, 1401 Laubach Avenue, Northampton, Pennsylvania. | | | | | |
| Send comments to Mr. Charles Bodnar, President of the Northampton Borough Council, 1401 Laubach Avenue, P.O. Box 70, Northampton, Pennsylvania 18067—0070. | | | | | |
| Pennsylvania | Palmer (Township), Northampton County. | Lehigh River | Approximately 0.63 mile downstream of Chain Dam. | *202 | *195 |
| | | | Approximately 1.71 miles upstream of Chain Dam. | *210 | *209 |
| Maps available for inspection at the Palmer Township Hall, 3 Weller Place, Palmer, Pennsylvania. | | | | | |
| Send comments to Mr. Jeffrey Young, Chairman of the Palmer Township Board of Supervisors, 3 Weller Place, P.O. Box 3039, Palmer, Pennsylvania 18043. | | | | | |
| Pennsylvania | Palmyra (Township), Pike County. | Lake Wallenpaupack | Entire area within community | None | *1,191 |
| | | Lackawaxen River | Approximately 100 feet upstream of Kimbles Road. | None | *835 |
| | | | Approximately 3.4 miles upstream of Kimbles Road. | None | *884 |
| | | Wallenpaupack Creek | Approximately 0.7 mile downstream of U.S. Route 6. | None | *1,040 |
| | | | Approximately 1,500 feet upstream of U.S. Route 6. | None | *1,138 |
| Maps available for inspection at the Palmyra Township Building, Gumbletown Road, Buehler Lane, Paupack, Pennsylvania. | | | | | |
| Send comments to Mr. Tom Simmons, Chairman of the Palmyra Township Board of Supervisors, HRC, Box 15-C, Paupack, Pennsylvania 18451. | | | | | |
| Pennsylvania | Perkasie (Borough), Bucks County. | East Branch Perkiomen Creek. | At downstream corporate limits | *308 | *307 |
| | | | Approximately 620 feet upstream of East Callowhill Road. | *318 | *317 |
| Maps available for inspection at the Perkasie Borough Office, 311 South 9th Street, Perkasie, Pennsylvania. | | | | | |
| Send comments to Mr. John L. Cornelius, Perkasie Borough Manager, P.O. Box 275, Perkasie, Pennsylvania 18944. | | | | | |
| Pennsylvania | Plainfield (Township), Northampton County. | West Branch Little Bushkill Creek. | Approximately 460 feet downstream of State Route 512. | None | *682 |
| | | | Approximately 300 feet downstream of Male Street. | None | *689 |
| Maps available for inspection at the Plainfield Township Hall, 6292 Sullivan Trail, Nazareth, Pennsylvania. | | | | | |
| Send comments to Mr. Randy Lieberman, Chairman of the Township of Plainfield Board of Supervisors, 6292 Sullivan Trail, Nazareth, Pennsylvania 18064. | | | | | |
| Pennsylvania | Portland (Borough), Northampton County. | Delaware River | Approximately 0.36 mile downstream of confluence with Jacoby Creek. | *293 | *294 |
| | | | Approximately 0.60 mile upstream of confluence with Jacoby Creek. | *298 | *299 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Portland Borough Building, 1 Division Street, Portland, Pennsylvania. | | | | | |
| Send comments to The Honorable Kay Bucci, Mayor of the Borough of Portland, P.O. Box 295, Portland, Pennsylvania 18351. | | | | | |
| Pennsylvania ..... | Sellersville (Borough), Bucks County. | East Branch Perkiomen Creek. | Approximately 150 feet downstream of CONRAIL bridge. | *302 | *303 |
| | | | At upstream corporate limits ..... | *308 | *307 |
| Maps available for inspection at the Sellersville Borough Hall, 140 East Church Street, Sellersville, Pennsylvania. | | | | | |
| Send comments to The Honorable Joseph F. Hufnagle, Sr., Mayor of the Borough of Sellersville, 140 East Church Street, Sellersville, Pennsylvania 18960. | | | | | |
| Pennsylvania ..... | Shohola (Township), Pike County. | Delaware River ..... | Approximately 1,200 feet downstream of Pond Eddy Bridge. | None | *527 |
| | | | Approximately 6.8 miles upstream of Pond Eddy. | None | *578 |
| Maps available for inspection at the Shohola Township Hall, 159 Twin Lakes Road, Shohola, Pennsylvania. | | | | | |
| Send comments to Mr. George Fluhr, Chairman of the Township of Shohola Board of Supervisors, 159 Twin Lakes Road, Shohola, Pennsylvania 18458. | | | | | |
| Pennsylvania ..... | Upper Mt. Bethel (Township), Northampton County. | Delaware River ..... | Just downstream of Riverton-Belvidere Highway bridge. | *256 | *255 |
| | | | Approximately 110 feet downstream of the county boundary. | *314 | *313 |
| Maps available for inspection at the Mt. Bethel Township Hall, 387 Ye Olde Highway, Mt. Bethel, Pennsylvania. | | | | | |
| Send comments to Mr. Lewis L. Donatelli, Sr., Chairman of the Upper Mt. Bethel Township Board of Supervisors, 387 Ye Olde Highway, Mt. Bethel, Pennsylvania 18343. | | | | | |
| Pennsylvania ..... | Walnutport (Borough), Northampton County. | Lehigh River ..... | Approximately 1.05 miles downstream of Route 946 (Main Street). | *356 | *358 |
| | | | Approximately 0.4 mile upstream of Route 946 (Main Street). | *366 | *367 |
| Maps available for inspection at the Walnutport Borough Offices, 417 Lincoln Avenue, Walnutport, Pennsylvania. | | | | | |
| Send comments to Mr. William Turk, President of the Walnutport Borough Council, 120 Lincoln Avenue, Walnutport, Pennsylvania 18068. | | | | | |
| Pennsylvania ..... | West Easton (Borough), Northampton County. | Lehigh River ..... | Approximately 0.88 mile downstream of Glendon Parkway. | *192 | *195 |
| | | | Approximately 50 feet downstream side of 25th Street. | *197 | *195 |
| Maps available for inspection at the West Easton Borough Hall, 237 7th Street, West Easton, Pennsylvania. | | | | | |
| Send comments to Mr. Carl Persion, West Easton Borough Council President, 237 7th Street, West Easton, Pennsylvania 18042. | | | | | |
| Pennsylvania ..... | West Rockhill (Township), Bucks County. | East Branch Perkiomen Creek. | At the upstream side of CountyLine Road | *275 | *276 |
| | | | Approximately 550 feet downstream of CONRAIL bridge. | *302 | *301 |
| Maps available for inspection at the West Rockhill Township Hall, 1028 Ridge Road, Sellersville, Pennsylvania. | | | | | |
| Send comments to Mr. Richard Derstine, Chairman of the Township of West Rockhill Board of Supervisors, 1028 Ridge Road, Sellersville, Pennsylvania 18960. | | | | | |
| Pennsylvania ..... | Westfall (Township), Pike County. | Delaware River ..... | Approximately 1.4 miles downstream of confluence of Cummings Creek. | *408 | *409 |
| | | | Approximately 1,050 feet downstream of Pond Eddy Bridge. | None | *527 |
| Maps available for inspection at the Westfall Township Office, 102 LaBarr Lane, Matamoras, Pennsylvania. | | | | | |
| Send comments to Mr. Richard Maggs, Chairman of the Township of Westfall Board of Supervisors, Box 247, Matamoras, Pennsylvania. | | | | | |
| Pennsylvania ..... | Williams (Township), Northampton County. | Lehigh River ..... | Approximately 0.27 mile upstream of Chain Dam. | *204 | *203 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | Approximately 1.61 miles upstream of Chain Dam. | *208 | *209 |
| | | Delaware River | At the county boundary | *163 | *165 |
| | | | Approximately 1 mile upstream of Interstate 78. | *186 | *191 |
| Maps available for inspection at the Williams Township Municipal Building, 655 Cider Press Road, Easton, Pennsylvania. | | | | | |
| Send comments to Mr. Jeffery Marsh, Williams Township Manager, 655 Cider Press Road, Easton, Pennsylvania 18042. | | | | | |
| Pennsylvania | Wilson (Borough), Northampton County. | Lehigh River | Approximately 500 feet downstream of 25th Street. | *197 | *195 |
| | | | Approximately 950 feet upstream of 25th Street. | *197 | *195 |
| Maps available for inspection at the Wilson Borough Hall, 2040 Hay Terrace, Easton, Pennsylvania. | | | | | |
| Send comments to Mr. David S. Perruso, President of the Wilson Borough Council, 2040 Hay Terrace, Easton, Pennsylvania 18042. | | | | | |
| South Carolina | Columbia (City), Richland County. | Gills Creek | Upstream side of State Route 48 (Bluff Road. | *140 | *138 |
| | | | At the Southern Railway Bridge | *140 | *139 |
| | | Saluda River | At the confluence with the Broad and Congaree Rivers. | *158 | *152 |
| | | | Approximately 850 feet upstream of USGS Gage No. 2–1690. | *171 | *170 |
| | | Rocky Branch | Approximately 200 feet downstream of Olympia Avenue. | *152 | *148 |
| | | | Approximately 460 feet upstream of Olympia Avenue. | *152 | *151 |
| | | Congaree River | At the downstream side of Southern Railway bridge. | *154 | *149 |
| | | | At confluence of Broad and Saluda Rivers. | *158 | *152 |
| Maps available for inspection at the Columbia City Hall, 1225 Laurel Street, Columbia, South Carolina. | | | | | |
| Send comments to The Honorable Robert Coble, Mayor of the City of Columbia, 1737 Main Street, Columbia, South Carolina 29201. | | | | | |
| South Carolina | Cayce (City), Lexington County. | Congaree Creek | Approximately 1,130 feet upstream of the confluence with the Congaree River. | *139 | *135 |
| | | | Approximately 1,550 feet upstream of Charleston Highway (U.S. Highway 321). | *142 | *141 |
| | | Six Mile Creek | At the confluence with Congaree Creek .. | *142 | *140 |
| | | | Approximately 675 feet downstream of the confluence of Tributary SM–2. | *142 | *141 |
| | | Congaree River | Approximately 100 feet upstream of the confluence of Congaree Creek. | *139 | *135 |
| | | | Approximately 1,250 feet upstream of Blossom Street. | *156 | *150 |
| Maps available for inspection at the Cayce City Hall, 1800 12th Street Extension, Cayce, South Carolina. | | | | | |
| Send comments to The Honorable Avery B. Wilkerson, Jr., Mayor of the City of Cayce, P.O. Box 2004, Cayce, South Carolina 29171–2004. | | | | | |
| South Carolina | Lexington County (Unincorporated Areas). | Congaree Creek | At the confluence with the Congaree River. | *138 | *135 |
| | | | Approximately 1,550 feet upstream of Charleston Highway (U.S. Highway 321). | *142 | *141 |
| | | Six Mile Creek | Approximately 115 feet upstream of the CSX Transportation Bridge. | *142 | *140 |
| | | | Approximately 675 feet downstream of the confluence of Tributary SM–2. | *142 | *141 |
| | | Saluda River | At the confluence with Congaree and Broad Rivers. | *158 | *152 |
| | | | Approximately 1,300 feet upstream of the confluence of Double Branch. | *174 | *173 |
| | | Congaree River: | At downstream county boundary | None | *128 |
| | | | At confluence of Broad and Saluda Rivers. | *158 | *152 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Maps available for inspection at the Lexington County Planning Department, 212 South Lake Drive, Lexington, South Carolina. Send comments to Mr. Johnny Jeffcoat, Chairman of the Lexington County Council, 212 South Lake Drive, Lexington, South Carolina 29072. | | | | | |
| South Carolina ..... | West Columbia (City), Lexington County. | Congaree River ..... | Approximately 1,250 feet upstream of Blossom Street. | *156 | *150 |
| | | | Downstream side of Jarvis Klapman Boulevard. | *158 | *151 |
| Maps available for inspection at the West Columbia City Hall, 1053 Center Street, West Columbia, South Carolina. Send comments to The Honorable Wyman Mack Rish, Mayor of the City of West Columbia, 1053 Center Street, West Columbia, South Carolina 29169. | | | | | |
| Virginia ..... | Danville (City), Pittsylvania County. | Apple Branch ..... | At confluence with Dan River ..... | None | *418 |
| | | | Approximately 25 feet upstream of Northmont Boulevard. | None | *535 |
| | | Dan River ..... | At downstream corporate limits ..... | *395 | *396 |
| | | | Approximately 970 feet downstream of upstream corporate limits. | *457 | *458 |
| | | Sandy Creek ..... | At confluence with Dan River ..... | *421 | *424 |
| | | | At downstream side of U.S. Route 58 ..... | *423 | *424 |
| | | Sandy River ..... | At confluence with Dan River ..... | *424 | *427 |
| | | | Just downstream of old U.S. Route 58 .... | *426 | *427 |
| | | Pumpkin Creek ..... | At confluence with Dan River ..... | *4009 | *401 |
| | | | 750 feet upstream of State Route 265 ..... | *400 | *401 |
| | | Jackson Branch ..... | At confluence with Dan River ..... | *401 | *403 |
| | | | Approximately 1,725 feet upstream of Goodyear Boulevard (Whitmell Street). | *402 | *403 |
| | | Fall Creek ..... | At confluence with Dan River ..... | *403 | *404 |
| | | | 100 feet downstream of Halifax Street ..... | *403 | *404 |
| Maps available for inspection at the Department of Community Development, 427 Patton Street, Danville, Virginia. Send comments to Mr. Lyle Lacy, Interim City Manager, P.O. Box 3300, Danville, Virginia 24543. | | | | | |
| West Virginia ..... | Moorefield (Town), Hardy County. | Unnamed Ponding Area ... | Approximately 500 feet southwest of the intersection of U.S. Route 220 and Monroe Avenue. | *805 | *804 |
| | | South Branch Potomac River. | Unnamed tributary from downstream corporate limits to Spring Avenue. | None | *798 |
| Maps available for inspection at the Moorefield Town Hall, 206 Winchester Avenue, Moorefield, West Virginia. Send comments to The Honorable Larry P. Snyder, Mayor of the Town of Moorefield, 206 Winchester Avenue, Moorefield, West Virginia 26836. | | | | | |

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

Dated: May 16, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–14292 Filed 6–20–00; 8:45 am]

**BILLING CODE 6718–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

**[CC Docket No. 98–67; FCC 00–56]**

## Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** On March 6, 2000, the Commission released a Further Notice of Proposed Rulemaking (FNPRM) regarding telecommunications relay services (TRS). In the FNPRM, the Commission asks for comment on how to further improve TRS to ensure that TRS remains ''functionally equivalent'' to voice telecommunications service as telecommunications capabilities change over time. Specifically, the FNPRM asked what changes are necessary to increase public awareness of TRS among all callers, not just those with disabilities, including how a national awareness education campaign can be established; and whether other technologies, services, and features should be made available to TRS users.

**DATES:** Reply comments are due on or before July 5, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any

comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Jones, Attorney, 202/418–2357, Fax 202/418–2345, TTY 202/418–0484, *majones@fcc.gov, Common Carrier Bureau.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Further Notice of Proposed Rulemaking (FNPRM) in the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CC Docket No. 98–67, FCC 00–56, adopted February 17, 2000 and released March 6, 2000. The full text of the item is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554, or copies may be purchased from the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW, Suite CY–B400, Washington, DC 20554, phone (202) 857-3800.

**Synopsis of the Further Notice of Proposed Rulemaking**

1. In January 1997, we released a Notice of Inquiry (NOI) on the quality of TRS service. Based on the record developed in the NOI, the Commission released a Notice of Proposed Rulemaking (NPRM) that proposed rules to enhance the quality of telecommunications relay service. In response, the Commission received numerous suggestions on ways to improve TRS. After considering the many comments received, we released a Report and Order and Further Notice of Proposed Rulemaking.

2. In the FNPRM, we seek comment on the establishment of a national education campaign to increase awareness of TRS among all callers, not just those with disabilities; whether there should be a separate, nationwide 800 number for STS relay service; and whether TRS providers should have access to SS7 technology in order to better handle emergency calls, be compatible with Caller ID and more efficiently bill for and deliver relay services.

**Initial Regulatory Flexibility Analysis**

3. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in this FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the FNPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

*A. Need for, and Objectives of, the Proposed Rules*

4. The Commission is issuing this FNPRM to seek public comment on technological advances that could improve the level and quality of service provided through TRS for the benefit of the community of TRS users. In doing so, the Commission hopes to enhance the quality of TRS, and broaden the potential universe of TRS users consistent with Congress' direction at 47 U.S.C. 225(d)(2) to the Commission to ensure that its regulations encourage the use of existing technology and not discourage or impair the development of improved technology. Specifically, the FNPRM seeks comment on outreach programs, the accessibility of emergency services to TRS, and whether SS7 services should be made available to TRS centers. The intent of these proposed rules is to improve the overall effectiveness of the TRS program.

*B. Legal Basis*

5. The authority for actions proposed in this FNPRM may be found in sections 1, 4(I) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 218 and 225.

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

6. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. 5 U.S.C. 601(3). A small business concern is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 5 U.S.C. 632 (1996). The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service.

*Telecommunications Industry Revenue, Figure 2*

7. *TRS Providers.* Neither the Commission nor the SBA has developed a definition of small entity specifically applicable to providers of telecommunications relay services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. Small Business Act, 5 U.S.C. 632 (1996). The SBA defines such establishments to be small businesses when they have no more than 1,500 employees. 13 CFR 121.201, Standard Industrial Classification (SIC) Code 4813. According to our most recent data, there are 11 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. We do not have data specifying the number of these providers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and we are thus unable at this time to estimate with greater precision the number of TRS providers that would qualify as small business concerns under the SBA's definition. We note, however, that these providers include large interexchange carriers and incumbent local exchange carriers. Consequently, we estimate that there are fewer than 11 small TRS providers that may be affected by the proposed rules, if adopted. We seek comment generally on our analysis identifying TRS providers, and specifically on whether we should conclude, for Regulatory Flexibility Act purposes, that any TRS providers are small entities.

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

8. This FNPRM imposes no requirement to file any information with the Federal Communications Commission.

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

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities: (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

10. The proposals in the FNPRM, and the comments the Commission seeks regarding them, are part of the Commission's analysis of its role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. The guiding principal shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology and that the Commission's rules do not discourage the implementation of technological advances or improvements. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute, common carriers providing voice transmission services who are subject to the TRS rules, including small entities, may comply with their obligations individually, through designees, through competitively selected vendor, or in concert with other carriers. 47 U.S.C. 225(c). For this reason, the Commission expects that the proposed rule amendments will have minimal impact on small entities. We tentatively conclude that our proposals in the FNPRM would impose minimum burdens on small entities. We seek comment on our tentative conclusion.

*E. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

11. None.

**List of Subjects in 47 CFR Part 64**

Communications common carriers, Disabilities, Telephone, Telecommunications relay service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–15707 Filed 6–20–00; 8:45 am]

BILLING CODE 6712–01–U

# Notices

Federal Register
Vol. 65, No. 120
Wednesday, June 21, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Government Owned Inventions Available for Licensing

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

**ACTION:** Notice of Government Owned Inventions Available for Licensing.

**SUMMARY:** The inventions listed below are owned by the U.S. Government as represented by the Department of Agriculture, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by writing to: Janet I. Stockhausen of the USDA Forest Service, One Gifford Pinchot Drive, Madison, Wisconsin 53705–2398; telephone 608–231–9502; fax: 608–231–9508; or email at jistockh@facstaff.wisc.edu. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

**SUPPLEMENTARY INFORMATION:** The inventions available for licensing are:

09/540,841 ''Fungal Degradation and Bioremediation System for CCA-Treated Wood''

09/541,893 ''Fungal Degradation and Bioremediation System for Creosote-Treated Wood''

09/541,944 ''Fungal Degradation and Bioremediation System for Pentachlorophenol-Treated Wood''

09/541,945 ''Fungal Degradation and Bioremediation System for ACQ-Treated Wood''

**June Blalock,**

*Technology Licensing Coordinator.*

[FR Doc. 00–15625 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent To Grant Exclusive License

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

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to OPIsystems Inc. of Calgary, Alberta, Canada, an exclusive license to U.S. Patent Number 5,646,404, issued July 8, 1997, entitled ''Electronic Grain Probe Insect Counter (EGPIC)''. Notice of Availability to Serial Number 08/390,834 was published in the **Federal Register** on April 19, 1995.

**DATES:** Comments must be received on or before August 20, 2000.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, 4–1158, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as OPIsystems Inc. submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Richard M. Parry, Jr.,**

*Assistant Administrator.*

[FR Doc. 00–15627 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 00–057–1]**

### Notice of Request for Extension of Approval of an Information Collection

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

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations intended to prevent the introduction of foreign plant pests into the United States.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by August 21, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–057–1, 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. 00–057–1.

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 dockets, are available on the Internet at http://

www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Cooperative Agricultural Pest Survey, contact Ms. Coanne O'Hern, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8717. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

**SUPPLEMENTARY INFORMATION:**

*Title:* Cooperative Agricultural Pest Survey.

*OMB Number:* 0579–0010.

*Expiration Date of Approval:* August 31, 2000.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* The United States Department of Agriculture (USDA) is responsible for preventing foreign plant pests from entering the United States, preventing the spread of pests not widely distributed within the United States, and eradicating those pests when eradication is feasible. The Plant Quarantine Act and the Federal Plant Pest Act authorize the Department to carry out this mission.

The Plant Protection and Quarantine (PPQ) division of USDA's Animal and Plant Health Inspection Service is responsible for implementing the regulations that carry out the intent of these Acts.

To this end, PPQ has joined forces with the States to create a program called the Cooperative Agricultural Pest Survey.

This program allows the States and PPQ to conduct surveys to detect and measure the presence of foreign plant pests of concern and to enter survey data into a national computer-based system called the National Agricultural Plant Information System. This, in turn, allows us to obtain a more comprehensive picture of plant pest conditions in the United States.

The information generated by this program is used by the States to predict potential plant pest situations. It is used by Federal interests to promptly detect and respond to the occurrence of new pests and to record the location of those pest incursions that could directly hinder the export of U.S. farm commodities.

Plant pests such as insects or certain bacteria have the potential to cause billions of dollars in damage to U.S. agriculture if they become established within the United States.

Our Cooperative Agricultural Pest Survey entails the use of several information collection activities, including a Cooperative Agreement, Cooperative Agricultural Pest Survey procedures, and a Specimens for Determination Form (PPQ Form 391).

We are asking the Office of Management and Budget (OMB) to approve, for an additional 3 years, our use of this information collection activity in connection with our survey work.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our Agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average .04122 hours per response.

*Respondents:* State cooperators participating in our Cooperative Agricultural Pest Survey.

*Estimated annual number of respondents:* 50.

*Estimated annual number of responses per respondent:* 701.

*Estimated annual number of responses:* 35,050.

*Estimated total annual burden on respondents:* 1,445 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

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.

Done in Washington, DC, this 15th day of June 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–15623 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 00–026–1]**

### Monsanto Co.; Availability of Environmental Assessment for Extension of Determination of Nonregulated Status for Corn Genetically Engineered for Glyphosate Herbicide Tolerance

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

**ACTION:** Notice.

**SUMMARY:** We are advising the public that an environmental assessment has been prepared for a proposed decision to extend to one additional corn line our determination that a corn line developed by Monsanto Company, which has been genetically engineered for tolerance to the herbicide glyphosate, is no longer considered a regulated article under our regulations governing the introduction of certain genetically engineered organisms. We are making this environmental assessment available to the public for review and comment.

**DATES:** We will consider all comments that we receive by July 21, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–026–1, 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. 00–026–1.

You may read the extension request and the environmental assessment 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. To be sure someone is there to help you, please call (202) 690–2817 before coming.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Turner, Biotechnology Assessments Section, Permits and Risk Assessments, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8365. To obtain a copy of the extension request or the environmental assessment, contact Ms. Kay Peterson at (301) 734–4885; e-mail: kay.peterson@usda.gov.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests,'' regulate,

among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Further, the regulations in § 340.6(e)(2) provide that a person may request that APHIS extend a determination of nonregulated status to other organisms. Such a request must include information to establish the similarity of the antecedent organism and the regulated article in question.

**Background**

On January 11, 2000, APHIS received a request for an extension of a determination of nonregulated status (APHIS No. 00–11–01p) from Monsanto Company (Monsanto) of St. Louis, MO, for a corn line designated as Roundup Ready® corn line NK603 (NK603), which has been genetically engineered for tolerance to the herbicide glyphosate. The Monsanto request seeks an extension of a determination of nonregulated status issued for Roundup Ready® corn line GA21 (GA21) in response to APHIS petition number 97–099–01p (62 FR 64350–64351, December 5, 1997, Docket No. 97–052–2). Based on the similarity of NK603 to GA21, the antecedent organism, Monsanto requests a determination that glyphosate-tolerant corn line NK603 does not present a plant pest risk and, therefore, is not a regulated article under APHIS' regulations in 7 CFR part 340.

**Analysis**

Like the antecedent organism, corn line NK603 has been genetically engineered to contain an enzyme, 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS), that imparts tolerance to the herbicide glyphosate. However, corn was the source of the EPSPS enzyme in the antecedent organism, while the EPSPS enzyme in NK603 was derived from *Agrobacterium* sp. strain CP4. The subject corn line and the antecedent organism were developed through use of the particle acceleration method, and expression of the added genes in NK603 and the antecedent organism is controlled in part by gene sequences derived from the plant pathogen *A. tumefaciens*.

Corn line NK603 and the antecedent organism were genetically engineered using the same transformation method and contain a functionally equivalent enzyme that makes the plants tolerant to the herbicide glyphosate. Accordingly, we have determined that corn line NK603 is similar to the antecedent organism in APHIS petition number 97–099–01p, and we are proposing that this line should no longer be regulated under the regulations in 7 CFR part 340.

The subject corn line has been considered a regulated article under APHIS' regulations in 7 CFR part 340 because it contains gene sequences derived from plant pathogens. However, evaluation of field data reports from field tests of NK603 conducted under APHIS notifications since 1997 indicates that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of its environmental release.

Should APHIS approve Monsanto's request for an extension of a determination of nonregulated status, corn line NK603 would no longer be considered a regulated article under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated articles under those regulations would no longer apply to the field testing, importation, or interstate movement of the subject corn line or its progeny.

**National Environmental Policy Act**

An environmental assessment (EA) has been prepared to examine any potential environmental impacts associated with this proposed extension of a determination of nonregulated status. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (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 Monsanto's extension request and the EA are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 15th day of June 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–15622 Filed 6–20–00; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Notice of Request for Extension of a Currently Approved Information Collection

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with Paperwork Reduction Act, this notice announces the Foreign Agricultural Service's intention to request an extension for a currently approved information collection in support of the regulations governing the entry of raw-cane sugar under the tariff rate quota (TRQ) into the United States.

**DATES:** Comments on this notice must be received by August 21, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Mail or deliver comments to James D. Grueff, Assistant Deputy Administrator, International Trade Policy and Acting Division Director, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington, DC 20250–1021. For further information, contact Mr. Grueff at telephone number (202) 720–4055.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certificate of Quota Eligibility OMB NUMBER: 0551–0014.

*Expiration date of approval:* November 30, 2000.

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

*Abstract:* The Harmonized Tariff Schedule of the United States (HTS) authorizes the Secretary of Agriculture to establish the quantity of raw-cane sugar which may be entered at the in-quota duty rates of the TRQ. The terms under which Certificates of Quota Eligibility will be issued to foreign countries that have been allocated a share of the TRQ are set forth in 15 CFR part 2011, Subpart A, Allocation of Tariff-rate Quota on Imported Sugars, Syrups, and Molasses. The authority for Certificates of Quota Eligibility is additional U.S. note 5(b)(iv) to chapter 17 of the HTS.

The regulation, promulgated by the U.S. Trade Representative, provides for the issuance of Certificates of Quota Eligibility by the Secretary of Agriculture, and in general prohibits sugar subject to the TRQ from being imported into the United States or withdrawn from a warehouse for consumption at the in-quota rates unless

such sugar is accompanied by a Certificate of Quota Eligibility. Certificates of Quota Eligibility are issued to foreign countries by the Licensing Authority who is the Assistant Deputy Administrator, International Trade Policy, Foreign Agricultural Service, United States Department of Agriculture, or his or her designee. The issuance of Certificates of Quota Eligibility is in such amounts and at such times as the Secretary determines are appropriate to enable the foreign country to fill its quota allocation for such quota period in a reasonable manner, taking into account traditional shipping patterns, harvesting period, U.S. import requirements, and other relevant factors.

The information required to be collected on the Certificate of Quota Eligibility is used to monitor and control the imports of sugar. Proper completion of the Certificate of Quota Eligibility is mandatory for those foreign governments that are eligible and elect to export raw sugar to the United States under the provisions of the tariff-rate quota.

*Estimate of burden:* The public reporting burden for these collections vary in direct relation to the number of Certificates of Quota Eligibility issued.

*Respondents:* Foreign governments.

*Estimated number of respondents:* 40 per annum.

*Estimated number of responses per respondent:* 30 per annum.

*Estimated total annual burden of respondents:* 200 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

*Request for Comments:* Send comments regarding (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 automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to James D. Grueff, Assistant Deputy Administrator, International Trade Policy and Acting Division Director, Import Policies Division, Foreign Agricultural Service, U.S. Department of Agriculture, Stop 1021, Washington D.C. 20250–1021. 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.

Signed at Washington, D.C. on June 14, 2000.

**Timothy J. Galvin,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 00–15624 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–10–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Information Collection; Request for Comments; Annual Wildfire Summary Report

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to reinstate a previously approved information collection with a change. Two forms are authorized under OMB number 0596–0025: FS–3100–8, Annual Wildfire Summary Report, for which OMB authorization expired April 30, 1996, and FS–3200–6, Cooperative Forestry Accomplishment Report, for which authorization expired October 31, 1999. The agency requests reinstatement of FS–3100–8 and will retire FS–3200–6.

The information collected using FS–3100–8, Annual Wildfire Summary Report, will enable the Forest Service to provide timely, substantive information to Congress about the effectiveness of State and local fire fighting agencies, when the agency requests annual funding for the Forest Service State and Private Forestry Cooperative Fire Program. This Program supplements the funding of State and local fire fighting efforts.

State fire marshals will use FS–3100–8 to collect information from their State and local fire agencies in response to a request for this information from the Forest Service.

**DATES:** Comments must be received in writing on or before August 21, 2000.

**ADDRESSES:** All comments should be addressed to Roger Condie, State and Private Forestry Deputy Area, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

Comments also may be submitted via facsimile to (202) 205–1174 or by email to: rcondie@fs.fed.us.

The public may inspect comments received at the Office of the Deputy Chief, State and Private Forestry, Forest Service, USDA, 2nd Floor NW, Yates Building, 201 14th Street S.W., Washington D.C. Visitors are urged to call ahead to facilitate entrance into the building.

**FOR FURTHER INFORMATION CONTACT:** Roger Condie, State and Private Forestry, 202–205–1037.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101 (note) Sec. 10) requires the Forest Service to collect information about wildfire suppression efforts by State and local fire fighting agencies in order to support specific congressional funding requests for the Forest Service State and Private Forestry Cooperative Fire Program. The Program provides supplemental funding for State and local fire fighting agencies. The Forest Service works cooperatively with State and local fire fighting agencies to support their fire suppression efforts.

State and local fire agencies, such as the Volunteer Fire Assistance Program, are the first line of defense against fires that might spread to National Forest System lands.

State fire marshals use FS–3100–8, Annual Wildfire Summary Report, to collect this information for the Forest Service. The Forest Service is requesting authorization to reinstate this form under OMB number 0596–0025. This form expired April 30, 1996.

A second form was authorized under OMB number 0596–0025; the form, FS–3200–6, Cooperative Forestry and Accomplishment Report, expired October 31, 1999. This form is no longer used and the Forest Service will retire FS–3200–6.

The Forest Service would be unable to assess the effectiveness of the State and Private Forestry Cooperative Fire Program if the information using FS–3100–8 were not collected.

#### Description of Information Collection

The following describes the information collection to be reinstated with change:

*Title:* FS–3100–8, Annual Wildfire Summary Report.

*OMB Number:* 0596–0025.

*Date of Expiration:* April 30, 1996.

*Type of Request:* Reinstatement of an information collection, with change, that was previously approved by the Office of Management and Budget.

*Abstract:* Forest Service State and Private Forestry Cooperative Fire Program managers will evaluate the collected information to determine if the Cooperative Fire Program funds,

provided to the State and local fire fighting agencies by the Forest Service, have been used by State and local fire agencies to improve their fire suppression capabilities. The Forest Service will share the results of the data with Congress when requesting annual funding for the Program. The collected information also will enable the Forest Service to share with the public the importance and value of the State and Private Forestry Cooperative Fire Program.

Forest Service employees will not collect the information directly, but will request the information from State fire marshals, who will collect the information through their own State fire fighting agencies, as well as from local fire fighting agencies, such as Volunteer Fire Departments. The information collected for the Annual Wildfire Summary Report will include the number of fires to which the State or local fire fighting agencies responded within the fiscal year; the types of fires, such as timber, structural, or grassland fires to which the fire fighters will have responded; the sizes of the fires in acres; the causes of the fires, such as lightening, campfire, or arson; and the costs associated with suppressing the fires.

Data gathered in this information collection are not available from other sources.

*Estimate of Annual Burden:* 30 minutes.

*Type of Respondents:* State fire marshals.

*Estimated Annual Number of Respondents:* 50.

*Estimated Annual Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 25 hours.

**Comment Is Invited**

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**Use of Comments**

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: June 14, 2000.

**Robin L. Thompson,**

*Associate Deputy Chief, State and Private Forestry.*

[FR Doc. 00–15628 Filed 6–20–00; 8:45 am]

BILLING CODE 3410–11–U

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Reinstate and Change an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to reinstate with change an information collection, the Agricultural Practices Survey.

**DATES:** Comments on this notice must be received by August 25, 2000, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* The Agricultural Practices Survey.

*OMB Control Number:* 0535–0239.

*Type of Request:* Intent to Reinstate and Change an Information Collection.

*Abstract:* The Agricultural Practices Survey will be conducted in late 2000 and early 2001 in 15 states: Alabama, Arizona, California, Florida, Georgia, Michigan, New Jersey, New York, North Carolina, Oregon, South Carolina, Texas, Washington, and Wisconsin. This survey complies with President Clinton's October 1997 directive, ''Initiative to Ensure the Safety of Imported and Domestic Fruits and Vegetables.'' The purpose of the survey is to analyze data on agricultural practices related to microbial food safety. Data will be collected on sources of vegetable microbial contamination such as water; manure, worker, field and facility sanitation, and crop identification systems.

NASS conducted a similar survey in the spring of 2000 to begin to establish a baseline of current agricultural practices in the fruit and vegetable industry. The 2001 effort will target more specific production practices involving fresh market vegetable production. NASS will summarize the 15-state survey data and publish estimates of frequency of operations carrying out basic agricultural practices. Summarized aggregated data will be made available to the Food and Drug Administration (FDA) and the United States Department of Agriculture (USDA). FDA will use the summary data to analyze current agricultural practices and to enhance the baseline established to evaluate changes in agricultural practices. USDA will use the data to develop educational outreach materials for fresh market vegetable growers and packers.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 60 minutes per response.

*Respondents:* Fresh market vegetable growers and packinghouses.

*Estimated Number of Respondents:* 8,000.

*Estimated Total Annual Burden on Respondents:* 6,600 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., May 16, 2000.

**Rich Allen,**

*Associate Administrator.*

[FR Doc. 00–15564 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent to Seek Approval To Conduct an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for an information collection, the Childhood Agricultural Injury Study of Minority Farm Operators.

**DATES:** Comments on this notice must be received by August 25, 2000, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, DC 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:**

*Title:* Childhood Agricultural Injury Study of Minority Farm Operators.

*Type of Request:* Intent to Seek Approval to Conduct an Information Collection.

*Abstract:* The Childhood Agricultural Injury Study of Minority Farm Operators is designed to provide estimates of childhood nonfatal injury incidence and description of injury occurring to children less than 20 years of age who reside, work, or visit farms operated by minorities. Data will be collected from all 50 states. Data will relate to accidents and injuries occurring during the 2000 calendar year. These data will be used by the National Institute of Occupational Safety and Health to establish a measure of the number and rate of childhood injuries associated with production agriculture, study the specific types of injuries sustained, and generate reports and disseminate information to all interested parties concerning the finding of this study.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3 minutes per response.

*Respondents:* Farms.

*Estimated Number of Respondents:* 50,000.

*Estimated Total Annual Burden on Respondents:* 2,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information 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: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, DC 20250–2000.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, D.C., June 1, 2000.

**Rich Allen,**

*Associate Administrator.*

[FR Doc. 00–15626 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–20–P**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, New York State Office.

**ACTION:** Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the New York State NRCS Field Office Technical Guide (FOTG) for review and comment.

**SUMMARY:** It is the intention of NRCS to issue a revised conservation practice standard in its National Handbook of Conservation Practices. This revised standard is: Streambank and Shoreline Protection (NY580).

**DATES:** Comments will be received for a 30-day period commencing on June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to Richard D. Swenson, State Conservationist, Natural Resources Conservation Service, (NRCS), 441 S. Salina Street, Fifth Floor, Suite 354, Syracuse, New York, 13202–2450.

A copy of this standard is available from the above individual.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: June 6, 2000.

**Richard D. Swenson,**

*State Conservationist, Natural Resources Conservation Service, Syracuse, NY.*

[FR Doc. 00–15595 Filed 6–20–00; 8:45 am]

**BILLING CODE 3410–16–U**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

**AGENCY:** Natural Resources Conservation Service (NRCS), USDA.

**ACTION:** Notice of availability of proposed changes in section IV of the FOTG of the NRCS in Indiana for review and comment.

**SUMMARY:** It is the intention of NRCS in Indiana to issue two revised conservation practice standards in section IV of the FOTG. The revised standards are Upland Wildlife Habitat Management (Code 645) and Irrigation Water Management (Code 449). These practices may be used in conservation systems that treat highly erodible land.

**DATES:** Comments will be received on or before July 21, 2000.

**ADDRESSES:** Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written or electronic request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Hardisty, 317–290–3200.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: June 12, 2000.

**Jane E. Hardisty,**

*State Conservationist, Indianapolis, Indiana.*

[FR Doc. 00–15667 Filed 6–20–00; 8:45 am]

BILLING CODE 3410–16–U

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Request for Proposals (RFP): Farm Labor Housing Technical Assistance Grants

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This RFP announces an availability of funds and the timeframe to submit proposals for Farm Labor Housing Technical Assistance (FLH–TA) grants.

Section 516 of the Housing Act of 1949 authorizes the Rural Housing Service (RHS) to provide financial assistance (grants) to eligible private and public nonprofit agencies to encourage the development of domestic and migrant farm labor housing projects. This RFP requests proposals from qualified private and public nonprofit agencies to provide technical assistance to groups who qualify for FLH loans and grants.

Work performed under these grants is expected to result in an increased submission of applications for farm labor housing loans and grants under the section 514 and 516 programs and in an increase of the availability of decent, safe, and sanitary housing for farm laborers.

**DATES:** The deadline for receipt of all applications in response to this RFP is 5:00 p.m., Eastern Daylight Time, on August 21, 2000. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

**ADDRESSES:** Applications should be submitted to the USDA—Rural Housing Service; Attention: Douglas MacDowell; Multi-Family Housing Processing Division—STOP 0781, Washington, DC 20250–0781. RHS will date and time stamp incoming applications to evidence timely receipt and, upon request, will provide the applicant with a written acknowledgement of receipt.

**FOR FURTHER INFORMATION CONTACT:** Sue M. Harris-Green, Deputy Director, Multi-Family Housing Processing Division—Direct Loans, RHS, USDA, Room 1241, South Building, 1400 Independence Ave. SW., Washington, DC 20250–0781, telephone (202) 720–1604. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** The technical assistance grants authorized under section 516 are for the purpose of encouraging the development of domestic and migrant farm labor housing projects under sections 514 and 516 of the Act. Proposals must demonstrate the capacity to provide the intended technical assistance.

The RHS intends to award one grant for each of three geographic regions. When establishing the three regions, consideration was given to such factors as farmworker migration patterns and the similarity of agricultural products and labor needs within certain areas of the United States. A single applicant may submit grant proposals for more than one region; however, separate proposals must be submitted for each region.

*Eastern Region:* AL, CT, DE, FL, GA, IN, KY, MA, MD, ME, NH, NJ, NY, NC, OH, PA, PR, RI, SC, TN, VI, VT, VA, WV.

*Central Region:* AR, IL, IA, KS, LA, MI, MN, MS, MO, NE, ND, OK, SD, TX, WI.

*Western Region:* AK, AZ, CA, CO, HI, ID, MT, NV, NM, OR, UT, WA, WY, and the Pacific Territories.

**Funding**

The RHS has the authority to utilize up to ten (10) percent of its section 516 appropriation for FLH-TA grants. The total FY 2000 appropriation for section 516 is $13,500,000. Therefore, the total amount of the FY 2000 appropriation that is available for FLH-TA grants is $1,350,000. Of that amount, up to $506,250 will be available for each of the Eastern and Western Grant Regions and up to $337,500 of the remaining funds will be available for the Central Grant Region. Work performed under these grants must be completed within three years of entering into the grant agreement provided as Appendix A to this Notice. The disbursement of grant funds during the grant period will be contingent upon the grantee making progress in meeting the minimum performance requirements as described in the Scope of Work section of this notice, including, but not limited to, the submission of loan application packages.

**Eligibility**

Eligibility for grants under this notice is limited to private and public nonprofit agencies. Grantees must have the knowledge, ability, technical expertise, or practical experience necessary to develop and package loan and grant applications for FLH under the section 514 and 516 programs (see the Application Requirements section of

this notice). In addition, grantees must possess the ability to exercise leadership, organize work, and prioritize assignments to meet work demands in a timely and cost efficient manner. The grantee may arrange for other nonprofit agencies to provide services on its behalf; however, the RHS will expect the grantee to provide the overall management necessary to ensure the objectives of the grant are met. Nonprofit agencies acting on behalf of the grantee must also meet the eligibility requirements stated above.

**Scope of Work**

*Minimum Performance Requirements*

(1) Grantees shall conduct outreach to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, public agencies (such as housing authorities) and other eligible organizations to further the section 514 and 516 FLH programs. Grantees will make at least twelve informational presentations to the general public annually to inform them about the section 514 and 516 FLH programs.

(2) Grantees shall conduct at least twelve one-on-one meetings annually with groups who are interested in applying for FLH loans or grants and assist such groups with the loan and grant application process.

(3) Grantees shall assist loan and grant applicants secure funding from other sources for the purpose of leveraging those funds with RHS funds.

(4) Grantees shall provide technical assistance during the development and construction phase of FLH proposals selected for funding.

(5) When submitting a grant proposal, applicants need not identify the geographic location of the places they intend to target for their outreach activities, however, applicants must commit to targeting at least five areas within the grant proposal's region. All targeted areas must be distinct market areas and not be overlapping. At least four of the targeted areas must be in different States. If the proposal is selected for funding, the applicant will be required to consult with each Rural Development State Director in the proposal's region for the purpose of developing their list of targeted areas. When determining which areas to target, consideration will be given to (a) the total number of farmworkers in the area, (b) the number of farmworkers in that area who lack adequate housing, (c) the percentage of the total number of farmworkers that are without adequate housing, and (d) areas which have not recently had a section 514 or 516 loan or grant funded for new construction. In addition, if selected for funding, the applicant will be required to revise their Statement of Work to identify the geographic location of the targeted areas and will submit their revised Statement of Work to the National Office for approval. When submitted for approval, the applicant must also submit a summary of their consultation with the Rural Development State Directors. At grant closing, the revised Statement of Work will be attached to, and become a part of, the grant agreement.

(6) During the grant period, each grantee must submit a minimum number of loan application packages to the Agency for funding consideration. The minimum number shall be the greater of (a) at least nine loan application packages for the Eastern and Western Regions and at least seven for the Central Region or, (b) a total number of loan application packages that is equal to 70 percent of the number of areas the grantee's proposal committed to targeting. Fractional percentages shall be rounded up to the next whole number. For example, if the grantee's proposal committed to targeting 13 areas, then the grantee must submit at least ten loan application packages during the grant period (13 areas × 70 percent = 9.1 rounded up to 10). The disbursement of grant funds during the grant period will be contingent upon the grantee making progress in meeting this minimum performance requirement. More than one application package for the same market area will not be considered unless the grantee submits documentation of the need for more than one FLH facility.

(7) Provide training to applicants of FLH loans and grants to assist them in their ability to manage FLH.

**Application Requirements**

The application process will be in two phases; the initial application (or proposal) and the submission of a formal application. Only those proposals that are selected for funding will be invited to submit formal applications. All proposals must include the following:

1. A summary page listing the following items. This information should be double-spaced between items and not be in narrative form.

a. Applicant's name,

b. Applicant's Taxpayer Identification Number,

c. Applicant's address,

d. Applicant's telephone number,

e. Name of applicant's contact person, telephone number, and address,

f. Amount of grant requested, and

g. The FLH–TA grant region for which the proposal is submitted (*i.e.*, Eastern, Central, or Western Region).

2. A narrative describing the applicant's ability to meet the eligibility requirements stated in this notice. If the applicant intends to have other agencies working on their behalf, the narrative must identify those agencies and address their ability to meet the stated eligibility requirements.

3. A detailed Statement of Work covering a three year period that contains measurable monthly and annual accomplishments. The applicant's Statement of Work is a critical component of the selection process. The Statement of Work must include an outreach component describing the grantee's activities to inform potentially eligible groups about the section 514 and 516 FLH program. The outreach component must include a schedule of their planned outreach activities and must be included in a manner so that performance can be measured. In addition, the outreach activities must be coordinated with the appropriate RHS State office and meet the minimum performance requirements as stated in the Scope of Work section of this notice. The Statement of Work must state *how many* areas the applicant will target for their outreach activities (**Note:** If selected for funding, the applicant will be required to revise their Statement of Work, after consultation with RD State Directors, to *identify the areas* that will be targeted). The Statement of Work must also include a component for training organizations on the application process and the long-term management of FLH. The Statement of Work will also describe the applicant's plans to access other funding for the development and construction of FLH and their experience in obtaining such funding. The Statement of Work must describe any duties or activities that will be performed by other agencies on behalf of the grantee.

4. An organizational plan that includes a staffing chart complete with name, job title, salary, hours, timelines, and descriptions of employee duties to achieve the objectives of the grant program.

5. Organizational documents and financial statements to evidence the applicant's status as a properly organized private or public nonprofit agency and the financial ability to carry out the objectives of the grant program. If other agencies will be working on behalf of the grantee, working agreements between the grantee and those agencies must be submitted as

part of the proposal and any associated cost must be included in the applicant's budget. Organizational and financial statements must also be submitted as part of the application for any agencies that will be working on behalf of the grantee to document the eligibility of those organizations.

6. A detailed budget plan projecting the monthly and annual expenses the grantee will incur. Costs will be limited to those that are allowed under 7 CFR parts 3015, 3016 and 3019.

7. To assure that funds are equitably distributed and that there is no duplication of efforts on related projects, all applicants are to submit a list of projects they are currently involved with, whether publicly or privately supported, that are, or may be, related to the objectives of this grant. In addition, the same disclosure must be provided for any agencies that will be working on behalf of the grantee.

8. The applicant must include a narrative describing its knowledge, demonstrated ability, or practical experience in providing training and technical assistance to applicants of loans or grants for the development of multi-family or farmworker housing. The applicant must identify the type of assistance that was applied for (loan or grant, tax credits, leveraged funding, etc.), the number times they have provided such assistance, and the success ratio of their applications. In addition, information must be provided concerning the number of housing units, their size, their design, and the amount of grant and loan funds that were secured.

9. A narrative describing the applicant's knowledge and demonstrated ability in estimating development and construction costs of multi-family or farm labor housing and for obtaining the necessary permits and clearances.

10. A narrative describing the applicant's ability and experience in overcoming community opposition to farm labor housing and describing the methods and techniques that they will use to overcome any such opposition, should it occur.

11. A separate one-page information sheet listing each of the ''Application Scoring Criteria'' contained in this notice, followed by the page numbers of all relevant material and documentation that is contained in the proposal that supports these criteria.

**Application Scoring Criteria**

The initial application (or proposal) evaluation process designed for this RFP will consist of two phases. The first phase will evaluate the applicant's Statement of Work and the degree to which it sets forth measurable objectives that are consistent with the objectives of FLH–TA grant program. The second phase will evaluate the applicant's knowledge and ability to provide the management necessary for carrying out a FLH–TA grant program. Proposals will only compete against other proposals within the same region. Selection points will be awarded as follows:

*Phase I—Statement of Work*

The Statement of Work will be evaluated to determine the degree to which it outlines efficient and measurable monthly and annual outcomes as follows:

a. The minimum performance requirements of this notice require that the grantee commit to targeting at least five areas (at least four of which are in different States). The more areas the applicant commits to targeting, the more scoring points they will be awarded; however, the more areas that they commit to targeting, the more loan application packages they will be expected to submit. The minimum performance requirements of this grant are based, in part, on the number of areas the applicant has committed to targeting. The number of areas within the region that the applicant has committed to targeting for outreach activities:

(1) 5–7 targeted areas: 0 points
(2) 8 targeted areas: 5 points
(3) 9–10 targeted areas: 10 points
(4) 11–12 targeted areas: 15 points
(5) 13 or more areas: 20 points

b. RHS wants the grantee to cover as much of the grant region as possible. RHS does not want the grantee's efforts to be concentrated in a limited number of States. For this reason, additional points will be awarded to grant proposals that target areas in more than four States (the minimum requirement is four). The grant proposal commits to targeting areas in the following number of States:

(1) 4 States: 0 points
(2) 5 States: 5 points
(3) 6 States: 10 points
(4) 7 States: 15 points
(5) More than 7 States: 20 points

(Reminder: Applications only compete within their grant region)

*Phase II—Project Management*

a. The number of successful multi-family or FLH loan or grant applications the applicant entity has assisted in developing and packaging:

(1) 0–5 applications: 0 points
(2) 6–10 applications: 10 points
(3) 11–15 applications: 20 points
(4) 16 or more applications: 30 points

b. The number of groups seeking loans or grants for the development of multi-family or FLH projects that the applicant entity has provided training and technical assistance.

(1) 0–5 groups: 0 points
(2) 6–10 groups: 5 points
(3) 11–15 groups: 10 points
(4) 16 or more groups: 15 points

c. The number of multi-family or FLH projects for which the applicant entity has assisted in estimating development and construction costs and obtaining the necessary permits and clearances:

(1) 0–5 projects: 0 points
(2) 6–10 projects: 5 points
(3) 11–15 projects: 10 points
(4) 16 or more projects: 15 points

d. The number of times the applicant entity has encountered community opposition *and* was able to overcome that opposition so that farm labor housing was successfully developed.

(1) 0–2 times: 0 points
(2) 2–5 times: 5 points
(3) 6–10 times: 10 points
(4) 11 or more times: 15 points

e. The number of times the applicant entity has been able to leverage funding from two or more sources for the development of a multi-family or FLH project.

(1) 0–5 times: 0 points
(2) 6–10 times: 5 points
(3) 11–15 times: 10 points
(4) 16 or more times: 15 points

f. The number of FLH projects that the applicant entity has assisted with on-going management (*i.e.,* rent-up, maintenance, etc.):

(1) 0–5 FLH projects: 0 points
(2) 6–10 FLH projects: 5 points
(3) 11–15 FLH projects: 10 points
(4) 16 or more FLH projects: 15 points

g. The level of success that the applicant entity has had in providing assistance to farmworkers (*i.e.,* health, education, housing, etc.).

Evidence that the applicant has had *extensive* success in providing assistance to farmworkers: 20 points.

Evidence that the applicant has had *moderate* success in providing assistance to farmworkers: 10 points.

Evidence that the applicant has had *limited* success in providing assistance to farmworkers: 5 points.

*Tie Breakers*—In the event two or more proposals are scored with an equal amount of points, selections will be made in the following order:

1. If an applicant has already had a proposal selected, their proposal will not be selected.

2. If there are equally scoring proposals, the lowest cost proposal will be selected.

3. Any remaining proposals that are scored equally will be selected by lottery drawing.

**Paperwork Reduction Act**

The collection information in this notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0575–0181.

However, in accordance with the Paperwork Reduction Act of 1995, RHS will seek standard OMB approval of the reporting requirements contained in the Notice and hereby opens a 60-day comment period.

*Estimate of Burden:* Public reporting burden for this collection is estimated to be 2.06 hours per response.

*Respondents:* Private and public nonprofit agencies.

*Estimated Number of Respondents:* 12.

*Estimated Number of Responses per Respondents:* 12.

*Estimated Number of Responses:* 147.

*Estimated Total Annual Burden on Respondents:* 303.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Rural Housing Service, including whether the information will have practical utility; (b) the accuracy of the Rural Housing Service'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 Cheryl Thompson, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: June 15, 2000.

**James C. Kearney,**

*Administrator, Rural Housing Service.*

**Appendix A—Farm Labor Housing Technical Assistance Grant Agreement**

[Form Approved OMB No. 0575–0181]

*Farm Labor Housing Technical Assistance Grant Agreement*

This agreement dated _____ is between _____, the grantee, organized and operated under _____, and
(authorizing State statute)
the United States of America acting through the Rural Housing Service (RHS). RHS agrees to grant a sum not to exceed $_____, subject to the terms and conditions of this agreement; provided, however, that the grant funds actually advanced and not needed for grant purposes shall be returned immediately to RHS. The Farm Labor Housing Technical Assistance (FLH–TA) grant statement of work approved by RHS, is attached, and shall commence within 10 days of the date of execution of this agreement by RHS and be completed by (date) _____.

RHS may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the grantee has failed to comply with the conditions of this grant agreement or RHS regulations related hereto. The grantee may appeal adverse decisions in accordance with RHS's appeal procedures contained in 7 CFR part 11.

In consideration of said grant by RHS to the grantee, to be made pursuant to section 516 of title V of the Housing Act of 1949, the grantee will provide such a program in accordance with the terms of this grant agreement and applicable regulations.

Part A—Definitions

1. ''Beginning date'' means the date this agreement is executed by both parties and costs can be incurred.

2. ''Ending date'' means the date this agreement is scheduled to be completed. It is also the latest date grant funds will be provided under this agreement, without an approved extension.

3. ''Disallowed costs'' are those charges to a grant which RHS determines cannot be authorized in accordance with applicable Federal cost principles contained in 7 CFR parts 3015, 3016 and 3019, as appropriate.

4. ''FLH–TA'' means Farm Labor Housing Technical Assistance, the purpose for which grant funds are awarded under this agreement.

5. ''Grant closeout'' is the process by which the grant operation is concluded at the expiration of the grant period or following a decision to terminate the grant.

6. ''RHS'' means the Rural Housing Service, an agency of the United States Department of Agriculture.

7. ''Termination'' of the grant means the cancellation of Federal assistance, in whole or in part, at any time before the date of completion.

Part B—Terms of Agreement

RHS and the grantee agree that:

1. All grant activities shall be limited to those authorized by this grant agreement and section 516 of title V of the Housing Act of 1949.

2. This agreement shall be effective when executed by both parties.

3. The FLH–TA grant activities approved by RHS shall commence and be completed by the date indicated above, unless terminated under part B, paragraph 18 of this grant agreement, or extended by execution of the attached ''Amendment'' by both parties.

4. The grantee shall carry out the FLH–TA grant activities and processes as described in the approved statement of work which is attached to, and made a part of, this grant agreement. Grantee will be bound by the activities and processes contained in the statement of work and the further conditions contained in this grant agreement. If the statement of work is inconsistent with this grant agreement, then the latter will govern. A change of any activities and processes must be in writing and must be signed by the approval official.

5. The grantee shall use grant funds only for the purposes and activities approved by RHS in the FLH–TA grant budget. Any uses not provided for in the approved budget must be approved in writing by RHS in advance.

6. If the grantee is a private nonprofit corporation, expenses charged for travel or per diem will not exceed the rates paid to Federal employees or (if lower) an amount authorized by the grantee for similar purposes. If the grantee is a public body, the rates will be those that are allowable under the customary practice in the government of which the grantee is a part; if none are customary, the RHS Federal employee rates will be the maximum allowed.

7. Grant funds will not be used:

(a) To pay obligations incurred before the beginning date or after the ending date of this agreement;

(b) For any entertainment purposes;

(c) To pay for any capital assets, the purchase of real estate or vehicles, the improvement or renovation of the grantee's office space, or for the repair

or maintenance of privately owned vehicles;

(d) For any other purpose prohibited in 7 CFR parts 3015, 3016 and 3019, as applicable;

(e) For administrative expenses exceeding 20 percent of the FLH–TA grant funds; or

(f) For purposes other than to encourage the development of farm labor housing.

8. The grant funds shall not be used to substitute for any financial support previously provided and currently available or assured from any other source.

9. The disbursal of grants will be governed as follows:

(a) In accordance with 31 CFR part 205, grant funds will be provided by RHS as cash advances on an as needed basis not to exceed one advance every 30 days. The advance will be made by direct Treasury check to the grantee. In addition, the grantee must submit Standard Form (SF) 272, ''Federal Cash Transactions Report,'' each time an advance of funds is made. This report shall be used by RHS to monitor cash advances made to the grantee. The financial management system of the recipient organization shall provide for effective control over and accountability for all Federal funds as required by 7 CFR parts 3015, 3016, and 3019, as applicable.

(b) Cash advances to the grantee shall be limited to the minimum amounts needed and shall be timed to be in accord only with the actual, immediate cash requirements of the grantee in carrying out the purpose of the planned project. The timing and amount of cash advances shall be as close as administratively feasible to the actual disbursements by the grantee for direct program costs (as identified in the grantee's statement of work and budget and fund use plan) and proportionate share of any allowable indirect costs.

(c) Grant funds should be promptly refunded to the RHS and redrawn when needed if the funds are erroneously drawn in excess of immediate disbursement needs. The only exceptions to the requirement for prompt refunding are when the funds involved:

(i) Will be disbursed by the recipient organization within 7 calendar days from the date of the Treasury check; or

(ii) Are less than $10,000 and will be disbursed within 30 calendar days from the date of the Treasury check.

(d) Grantee shall provide satisfactory evidence to RHS that all officers of the grantee's organization authorized to receive or disburse Federal funds are covered by fidelity bonds in an amount of at least the grant amount to protect RHS's interests.

10. The grantee will submit performance, financial, and annual reports as required by 7 CFR parts 3015, 3016, and 3019, as applicable, to the appropriate RHS office. These reports must be reconciled to the grantee's accounting records.

(a) As needed, but not more frequently than once every 30 calendar days, submit an original and two copies of SF–270, ''Request for Advance or Reimbursement.'' In addition, the grantee must submit a SF–272, each time an advance of funds is made. This report shall be used by RHS to monitor cash advances made to the grantee.

(b) Quarterly reports will be submitted within 15 days after the end of each calendar quarter. Quarterly reports shall consist of an original and one copy of SF–269, ''Financial Status Report,'' and a quarterly performance report summarizing the grantee's activities and accomplishments for the prior quarter. Item 10, g (total program outlays) of SF–269, will be less any rebates, refunds, or other discounts. The quarterly performance report will provide a summary of the grantee's activities for the prior quarter and their progress in accomplishing the tasks described in the grantee's statement of work. The quarterly report will also inform RHS of any problems or difficulties the grantee is experiencing (*i.e.*, locating sites, finding feasible markets, gaining public support, *etc.*). The reports will be reviewed by RHS for the purpose of evaluating whether the grantee is accomplishing the objectives of the grant and whether RHS can assist the grantee in any manner. Quarterly reports shall be submitted to a designated official at the RHS National office, with a copy of the report to each State Director within the FLH–TA grant region where the grantee is operating.

(c) Within 90 days after the termination or expiration of the grant agreement, an original and two copies of SF–269, and a final performance report which will include a summary of the project's accomplishments, problems, and planned future activities of the grantee under FLH–TA grants. Final reports may serve as the last quarterly report.

(d) The RHS may change the format or process of the monthly and quarterly activities and accomplishment reports during the performance of the agreement.

11. In accordance with Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local, and Indian Tribal Governments (available in any RHS office), compensation for employees will be considered reasonable to the extent that such compensation is consistent with that paid for similar work in other activities of the State or local government.

12. If the grant exceeds $100,000, cumulative transfers among direct cost budget categories totaling more than 5 percent of the total budget must have prior written approval of RHS.

13. The results of the program assisted by grant funds may be published by the grantee without prior review by RHS, provided that such publications acknowledge the support provided by funds pursuant to the provisions of title V of the Housing Act of 1949, as amended, and that five copies of each such publication are furnished to RHS.

14. The grantee certifies that no person or organization has been employed or retained to solicit or secure this grant for a commission, percentage, brokerage, or contingency fee.

15. No person in the United States shall, on the grounds of race, religion, color, sex, familial status, age, national origin, or disability, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in connection with the use of grant funds. Grantee will comply with the nondiscrimination regulations of RHS contained in 7 CFR part 1901, subpart E.

16. In all hiring or employment made possible by or resulting from this grant:

(a) The grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, familial status, age, national origin, or disability,

(b) The grantee will ensure that employees are treated without regard to their race, religion, color, sex, familial status, age, national origin, or disability. This requirement shall apply to, but not be limited to, the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship, and

(c) In the event grantee signs a contract related to this grant which would be covered by any Executive Order, law, or regulation prohibiting discrimination, grantee shall include in the contract the ''Equal Employment Clause'' as specified by Form RD 400–1, ''Equal Opportunity Agreement''.

17. The grantee accepts responsibility for accomplishing the FLH–TA grant program as submitted and included in its preapplication and application, including its statement of work. The grantee shall also:

(a) Endeavor to coordinate and provide liaison with State and local housing organizations, where they exist.

(b) Provide continuing information to RHS on the status of grantee's FLH–TA grant programs, projects, related activities, and problems.

(c) Inform RHS as soon as the following types of conditions become known:

(i) Problems, delays, or adverse conditions which materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken or contemplated, new time schedules required and any RHS assistance needed to resolve the situation.

(ii) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

18. The grant closeout and termination procedures will be as follows:

(a) Promptly after the date of completion or a decision to terminate a grant, grant closeout actions are to be taken to allow the orderly discontinuation of grantee activity.

(i) The grantee shall immediately refund to RHS any uncommitted balance of grant funds.

(ii) The grantee will furnish to RHS within 90 calendar days after the date of completion of the grant, SF–269 and all financial, performance, and other reports required as a condition of the grant, including a final audit report, as required by 7 CFR part 3015, 3016, and 3019, as applicable. In accordance with 7 CFR part 3015 and OMB Circular A–133, audits must be conducted in accordance with generally accepted government auditing standards.

(iii) The grantee shall account for any property acquired with FLH–TA grant funds or otherwise received from RHS.

(iv) After the grant closeout, RHS will recover any disallowed costs which may be discovered as a result of an audit.

(b) When there is reasonable evidence that the grantee has failed to comply with the terms of this grant agreement, the Administrator (or his or her designee) can, on reasonable notice, suspend the grant pending corrective action or terminate the grant in accordance with part B, paragraph 18(c) of this grant agreement. In such instances, RHS may reimburse the grantee for eligible costs incurred prior to the effective date of the suspension or termination and may allow all necessary and proper costs which the grantee could not reasonably avoid. RHS will withhold further advances and grantees are prohibited from further use of grant funds, pending corrective action.

(c) Grant termination will be based on the following:

(i) Termination for cause. This grant may be terminated in whole, or in part, at any time before the date of completion, whenever RHS determines that the grantee has failed to comply with the terms of this agreement. The reasons for termination may include, but are not limited to, such problems as:

(A) Failure to make reasonable and satisfactory progress in attaining grant objectives.

(B) Failure of grantee to use grant funds only for authorized purposes.

(C) Failure of grantee to submit adequate and timely reports of its operation.

(D) Violation of any of the provisions of any laws administered by RHS or any regulation issued thereunder.

(E) Violation of any nondiscrimination or equal opportunity requirement administered by RHS in connection with any RHS programs.

(F) Failure to maintain an accounting system acceptable to RHS.

(ii) Termination for convenience. RHS or the grantee may terminate the grant in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds. The two parties shall agree upon the termination conditions, including the effective date and, in case of partial termination, the portion to be terminated.

(d) RHS shall notify the grantee in writing of the determination and the reasons for and the effective date of the suspension or termination. Except for termination for convenience, grantees have the opportunity to appeal a suspension or termination in accordance with 7 CFR part 11.

19. Upon any default under its representations or agreements contained in this instrument, the grantee, at the option and demand of RHS, will repay to RHS forthwith the grant funds received with interest at the rate of 5 percent per annum from the date of the default. The provisions of this grant agreement may be enforced by RHS, at its options and without regard to prior waivers by it or previous defaults of the grantee, by judicial proceedings to require specific performance of the terms of this grant agreement or by such other proceedings in law or equity, in either Federal or state courts, as may be deemed necessary by RHS to assure compliance with the provisions of this grant agreement and the laws and regulations under which this grant is made.

20. Extension of this grant agreement, modifications of the statement of work, or changes in the grantee's budget may be approved by RHS provided, in RHS's opinion, the extension or modification is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the statement of work during the period of the extension and/or modifications.

21. The provisions of 7 CFR parts 3015, 3016, and 3019, as applicable, are incorporated herein and made a part hereof by reference.

Part C—Grantee Agrees

1. To comply with property management standards for expendable and nonexpendable personal property established by 7 CFR parts 3015, 3016, and 3019.

2. To provide a financial management system which will include:

(a) Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on a cash basis. The financial management system shall include a tracking system to insure that all program income, including loan repayments, are used properly. The standards for financial management systems are contained in OMB Circular A–110 and 7 CFR 3015.

(b) Records which identify adequately the source and application of funds for grant supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(c) Effecting control over and accountability for all funds, property, and other assets. Grantee shall adequately safeguard all such assets and shall assure that they are solely for authorized purposes.

(d) Accounting records supported by source documentation.

3. To retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after the submission of the final performance report, in accordance with part B, paragraph 10(c) of this grant agreement, except in the following situations:

(a) If any litigation, claim, audit, or investigation is commenced before the expiration of the 3-year period, the records shall be retained until all litigation, claims, audits, or investigative findings involving the records have been resolved.

(b) Records for nonexpendable property acquired by RHS, the 3-year retention requirement is not applicable.

(c) When records are transferred to or maintained by RHS, the 3-year retention requirement is not applicable.

(d) Microfilm copies may be substituted in lieu of original records. RHS and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

4. To provide information as requested by RHS concerning the grantee's actions in soliciting citizen participation in the applications process, including published notices of public meetings, actual Public meetings held, and content of written comments received.

5. Not to encumber, transfer, or dispose of the property or any part thereof, furnished by RHS or acquired wholly or in part with FLH–TA grant funds without the written consent of RHS.

6. To provide RHS with such periodic reports of grantee operations as may be required by authorized representatives of RHS.

7. To execute Form RD 400–1 and Form RD 400–4, ''Assurance Agreement,'' and to execute any other agreements required by RHS to implement the civil rights requirements.

8. To include in all contracts in excess of $100,000, a provision for compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, 42 U.S.C. 1857(h). Violations shall be reported to RHS and the Regional Office of the Environmental Protection Agency.

9. That no member of Congress shall be admitted to any share or part of this grant or any benefit that may arise therefrom, but this provision shall not be construed to bar as a contractor under the grant a public-held corporation whose ownership might include a member of Congress.

10. That all nonconfidential information resulting from its activities shall be made available to the general public on an equal basis.

11. That the grantee shall relinquish any and all copyrights and privileges to the materials developed under this grant, such material being the sole property of the Federal Government. In the event anything developed under this grant is published in whole or in part, the material shall contain a notice and be identified by language to the following effect: ''The material is the result of tax-supported research and as such is not copyrightable. It may be freely reprinted with the customary crediting of the source.''

12. That the grantee shall abide by the policies contained in 7 CFR parts 3015, 3016, or 3019, as applicable, which provide standards for use by grantees in establishing procedures for the procurement of supplies, equipment, and other services with Federal grant funds.

13. That it is understood and agreed that any assistance granted under this grant agreement will be administered subject to the limitations of section 516 of title V of the Housing Act of 1949 and that all rights granted to RHS herein or elsewhere may be exercised by it in its sole discretion to carry out the purposes of the assistance, and protect RHS's financial interest.

14. That the grantee will adopt a standard of conduct that provides that, if an employee, officer, or agency of the grantee, or such person's immediate family members conducts business with the grantee, the grantee must not:

(a) Participate in the selection, award, or administration of a contract to such persons for which Federal funds are used;

(b) Knowingly permit the award or administration of the contract to be delivered to such persons or other immediate family members or to any entity (*i.e.,* partnerships, corporations, etc.) in which such persons or their immediate family members have an ownership interest; or

(c) Permit such person to solicit or accept gratuities, favors, or anything of monetary value from landlords or developers of rental or ownership housing projects or any other person receiving FLH–TA grant assistance.

15. That the grantee will be in compliance with and provide the necessary forms concerning the Debarment and Suspension and the Drug-free Workplace requirements.

Part D—RHS Agrees

1. That it will assist the grantee, within available appropriations, with such technical and management assistance as needed in coordinating the statement of work with local officials, comprehensive plans, and any State or area plans for improving housing for farmworkers.

2. That at its sole discretion, RHS may at any time give any consent, deferment, subordination, release, satisfaction, or termination of any or all of the grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as the grantor may determine to be:

(a) Advisable to further the purposes of the grant or to protect RHS's financial interests therein; and

(b) Consistent with the statutory purposes of the grant and the limitations of the statutory authority under which it is made and RHS's regulations.

Part E—Attachments

The grantee's statement of work is attached to and made a part of this grant agreement.

This grant agreement is subject to current RHS regulations and any future regulations not inconsistent with the express terms hereof. Grantee has caused this grant agreement to be executed by its duly authorized _____ properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:

Grantee:

By:

_____

_____

(Title)

Date of Execution of Grant Agreement by Grantee:

_____

United States of America
Rural Housing Service

By:

_____

_____

Date of Execution of Grant Agreement by RHS:

_____

Form Approved
OMB No. 0575–0181

*Amendment To Farm Labor Housing Technical Assistance Grant Agreement*

This amendment between _____, herein called the ''Grantee,'' and the United States of America acting through the Rural Housing Service, Department of Agriculture, herein called ''RHS,'' hereby amends the Farm Labor Housing Technical Assistance Grant Agreement originally executed by said parties on _____.

Said grant agreement is amended by extending the ending date of the grant agreement to _____, or by making the following changes noted in the attachments hereto (list and identify proposals) and any other documents pertinent to the grant agreement which are attached to this amendment.

The grantee has caused this ''Amendment To Farm Labor Housing Technical Assistance Grant Agreement'' to be executed by its duly authorized _____ properly attested to and its corporate seal affixed by its duly authorized _____.

Attest:
Grantee:
By:

(Title)
Date of Execution of Amendment to Grant Agreement by Grantee:

United States of America
Rural Housing Service:
By:

(Title)
Date of Execution of Amendment to Grant Agreement by RHS:

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[FR Doc. 00–15651 Filed 6–20–00; 8:45 am]
**BILLING CODE 3410–XV–U**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Dairyland Power Cooperative; Notice of Intent

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Intent to Hold Scoping Meeting and Prepare an Environmental Assessment.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for implementing NEPA (40 CFR parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to hold a scoping meeting and prepare an Environmental Assessment (EA) for its Federal action related to a project proposed by Dairyland Power Cooperative (DPC) of La Crosse, Wisconsin. The project consists of constructing a natural gas-fired simple cycle, combustion turbine power generation facility in Wheaton Township in Chippewa County, Wisconsin. Total electrical output from the facility is expected to range from 71 megawatts (MW) to 98 MW depending upon operating conditions.

**DATES:** RUS will conduct a scoping meeting in open house forum on Tuesday, July 11, 2000, from 5 p.m. until 8 p.m.

**ADDRESSES:** The scoping meeting will be held at the Chippewa County Courthouse, 711 North Bridge Street, Chippwea Falls, Wisconsin.

**FOR FURTHER INFORMATION CONTACT:** Nurul Islam, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–1784, FAX: (202) 720–0820, e-mail: nislam@rus.usda.gov; or George L. Johnston, Senior Environmental Biologist, DPC, 3200 East Avenue south, La Crosse, Wisconsin 54601, telephone (608) 787–1322, FAX: (608) 787–1241, e-mail: glj@dairynet.com.

**SUPPLEMENTARY INFORMATION:** DPC proposes to construct the facility at a site in Wheaton Township in Chippewa County, Wisconsin. The preferred site is the location of DPC's Elk Mound Substation. The primary purpose of the facility is to meet DPC peak electrical load during hot summer weather. Under those conditions the facility's expected output is about 71 MW of power. The proposed project will consist of two simple cycle combustion turbines. The two turbines will have a maximum rating of 49 MW each, with a summertime rating of 35.5 MW. The plant will require approximately 5 acres of land. The substation facilities will also require some upgrading. A 2.2 miles long new high-pressure gas line from the proposed generating station north to an existing gas line will provide gas supply. The total water usage will be approximately 3 million gallons per year.

Alternatives to be considered by RUS and DPC include no action, purchased power, upgrade of existing resources, alternative sites, hydropower, fossil fuel technologies, customer-owned generation, energy conservation, renewable resources, and emerging technologies.

DPC has prepared an Alternative Evaluation and Site Selection Study for the project. The Alternative Evaluation and Site Selection Study is available for public review at the RUS or DPC at the addresses provided in this notice or at the following locations:

Chippewa Falls Public Library, 105 West Central Street, Chippewa Falls, Wisconsin.

L. E. Phillips Memorial Public Library, 400 Eau Claire Street, Eau Claire, Wisconsin.

Federal, state and local agencies, private organizations, and the public are invited to participate in the planning and analysis of the proposed project. Representatives from RUS and DPC will be available at the scoping meeting to discuss RUS's environmental review process, the proposed project and the alternatives being considered, scope of the environmental issues to be considered, and answer questions. Oral and written comments will be accepted at the scoping meeting. Written comments regarding the proposed project will also be accepted for at least 30 days after the scoping meeting. All written comments should be sent to RUS at the address provided in this notice.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the CEQ Regulations and RUS Environmental Policies and Procedures.

Dated: June 15, 2000.

**Mark S. Plank,**

*Acting Director, Engineering and Environmental Staff, Rural Utilities Service.*

[FR Doc. 00–15562 Filed 6–20–00; 8:45 am]
**BILLING CODE 3410–15–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–830]**

### Continuation of Antidumping Duty Order: Coumarin From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Coumarin from the People's Republic of China.

**SUMMARY:** On May 4, 2000, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on coumarin from the People's Republic of China (''China'') is likely to lead to continuation or recurrence of dumping (65 FR 25906). On June 7, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 36163). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on coumarin from China.

**EFFECTIVE DATE:** June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 30, 1999, the Department initiated, and the Commission instituted, a sunset review of the antidumping duty order on coumarin from China pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Coumarin from the People's Republic of China; Final Results of Expedited Sunset Review,* 65 FR 25906 (May 4, 2000)).

On June 7, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Coumarin from China,* 65 FR 36163 (June 7, 2000) and USITC Publication 3305, Investigation No. 731–TA–677 (Review) (May 2000)).

**Scope**

The product covered by this order is coumarin from China. Coumarin is an aroma chemical with the chemical formula $C_9H_6O_2$ that is also known by other names, including 2H-1-benzopyran-2-one,1-2-benzopyrone, cis-o-coumaric acid lactone, coumarin anhydride, 2-Oxo-1,2-benzopyran, 5-6-benzo-alpha-pyrone, ortho-hydroxyc innamic acid lactone, cis-ortho-coumaric acid anhydride, and tonka bean camphor. All forms and variations of coumarin are included within the scope of the order, such as coumarin in crystal, flake, or powder form, and ''crude'' or unrefined coumarin (*i.e.* prior to purification or crystallization). Excluded from the scope of this order are ethylcoumarins $C_{11}H_{10}O_2$ and methylcoumarins $C_{10}H_8O_2$.

Coumarin is classifiable under subheading 2932.21.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on coumarin from China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this orders not later than May 2005.

Dated: June 14, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–15686 Filed 6–20–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–810]**

### Continuation of Antidumping Duty Order: Mechanical Transfer Presses From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Continuation of Antidumping Duty Order: Mechanical Transfer Presses from Japan.

**SUMMARY:** On May 3, 2000, the Department of Commerce (''the Department''), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (''the Act''), determined that revocation of the antidumping duty order on mechanical transfer presses from Japan is likely to lead to continuation or recurrence of dumping (65 FR 25705). On June 7, 2000, the International Trade Commission (''the Commission''), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (65 FR 36164). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on mechanical transfer presses from Japan.

**EFFECTIVE DATE:** June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–3330, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 1, 1999, the Department initiated, and the Commission instituted, a sunset review of the antidumping duty order on mechanical transfer presses from Japan, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (*see Final Results of Full Sunset Review: Mechanical Transfer Presses from Japan;* 65 FR 25705 (May 3, 2000)).

On June 7, 2000, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Mechanical Transfer Presses from Japan* (June 7, 2000) and USITC Publication 3304, Investigation No. 731–TA–429 (Review) (May 2000)).

**Scope**

The merchandise covered by this order is mechanical transfer presses from Japan. The term ''mechanical transfer press'' refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be assembled or unassembled.

The Department published in the **Federal Register** several Notices of Scope Rulings with respect to MTPs from Japan and determined that, (1) spare and replacement parts are outside

the scope of the order (*see* Notice of Scope Rulings, 57 FR 19602 (May 7, 1992)), (2) a destack sheet feeder designed to be used with a mechanical transfer press is an accessory and, therefore, is not within the scope of the order (*see* Notice of Scope Rulings, 57 FR 32973 (July 24, 1992)), (3) the FMX cold forging press is within the scope of the order (*see* Notice of Scope Rulings, 59 FR 8910 (February 24, 1994)), and (5) certain mechanical transfer press parts exported from Japan are outside the scope of the order (*see* Notice of Scope Rulings, 62 FR 9176 (February 28, 1997)).

This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8462.99.0035 and 8466.94.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description remains dispositive.

**Determination**

As a result of the determinations by the Department and the Commission that revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on mechanical transfer presses from Japan. The Department will instruct the Customs Service to continue to collect antidumping duty deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2005.

Dated: June 14, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–15675 Filed 6–20–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061500B]**

### Fisheries of the Exclusive Economic Zone off Alaska; Interactions with Steller Sea Lions

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

**ACTION:** Notice of public meetings.

**SUMMARY:** NMFS announces two public meetings to review evidence for competitive interactions between Steller sea lions and the Pacific cod fisheries in the Bering Sea/Aleutian Island region and Gulf of Alaska, suggest additional analyses of such interaction, and suggest fishery management alternatives to avoid competition and its potential detrimental impact on the endangered western population of Steller sea lions and its critical habitat.

**DATES:** The meeting dates are:

1. June 27, 2000, 9:00 a.m. to 5 p.m., Alaska local time, Kodiak, Alaska.

2. June 29, 2000, 9:00 a.m. to 5 p.m., Seattle, Washington.

**ADDRESSES:** The meeting locations are:

1. Kodiak—Kodiak Fisheries Research Center (second building on Near Island), large conference room, 301 Research Court, Kodiak, Alaska.

2. Seattle—Alaska Fisheries Science Center, Building 4, Room 2039, 7600 Sand Point Way, NE. Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Shane Capron, 907/586–7312.

**SUPPLEMENTARY INFORMATION:** NMFS' Office of Sustainable Fisheries (OSF), is responsible for management of the groundfish fisheries in the exclusive economic zone off Alaska, including fisheries for Pacific cod. As such, OSF is required by the Endangered Species Act (ESA) to insure that these fisheries do not jeopardize the continued existence of listed species nor destroy or adversely modify critical habitat. Section 7 of the ESA requires that OSF consult with NMFS' Office of Protected Resources (OPR) to evaluate the potential effects of the fisheries. During a previous consultation completed December 23, 1999, OPR identified information indicating a potential for competition between the Pacific cod fisheries and Steller sea lions. Steller sea lions are considered to be food-limited, may use the same Pacific cod resources as are taken by the fisheries, and may be disadvantaged if fishery removals reduce the availability of cod to foraging sea lions. The information is not conclusive, but indicates that such competition may occur to the detriment of sea lions.

Two meetings will be held to allow the public to review the existing scientific and commercial data pertinent to the issue of competition between Steller sea lions and the Pacific cod fisheries, suggest additional analyses that may shed light on this issue, and suggest possible management measures to avoid competition and adverse modification of critical habitat.

OSF and OPR are currently involved in an additional section 7 consultation under the ESA. This consultation is focused on the overall effects of the groundfish fisheries off Alaska as implemented under the Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish and the Fishery Management Plan for Groundfish of the Gulf of Alaska. The potential effect of the Pacific cod fisheries on the western population of Steller sea lions and its critical habitat is one of many issues that will be addressed in this comprehensive consultation. Input from the public meetings announced here, and any resulting changes to Pacific cod fishery management measures, will be reflected in the portion of the comprehensive consultation dealing with this particular issue.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shane Capron (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting dates.

Dated: June 15, 2000.

**Bruce C. Morehead,**

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

[FR Doc. 00–15665 Filed 6–20–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061500F]**

### 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 Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

**DATES:** The work session will be Monday, July 17, 2000, from 8 a.m. to 5 p.m.; Tuesday, July 18, 2000, from 8 a.m. to 5 p.m.; Wednesday, July 19, 2000, from 8 a.m. to 5 p.m.; and Thursday, July 20, 2000, from 8 a.m. to 12 p.m.

**ADDRESSES:** The work session will be held at the NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA; (619) 546–7100.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the work session is to review draft sections of the fishery management plan (FMP) for highly migratory species (HMS) and related documents and activities for HMS fisheries off the West Coast. Specific topics may include species in the management unit, regulations, bycatch and protected species, essential fish habitat descriptions, data issues, and the plan development schedule.

Management measures that may be adopted in the FMP for HMS fisheries off the West Coast include permit and reporting requirements for commercial and recreational harvest of HMS resources, time and/or area closures to minimize gear conflicts or bycatch, adoption or confirmation of state regulations for HMS fisheries, and allocations of some species to noncommercial use. The FMP is likely to include a framework management process to add future new measures, including the potential for collaborative management efforts with other regional fishery management councils with interest in HMS resources. It would also include essential fish habitat and habitat areas of particular concern, including fishing and nonfishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The proposed FMP and its associated regulatory analyses would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson-Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of activity of the Inter-American Tropical Tuna Commission in HMS fisheries in the eastern Pacific Ocean.

Although nonemergency issues not contained in the HMSPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dr. Don McIsaac at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: June 16, 2000.

**Richard W. Surdi,**

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

[FR Doc. 00–15662 Filed 6–20–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D.061500C]**

## Endangered Species; Permits

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

**ACTION:** Receipt of application to modify permit (1144).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a request to modify permit (1144) from Mr. Michael J. Bresette.

**DATES:** Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number no later than 5:00pm eastern standard time on July 21, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For application 1144M2, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910 Ph.: 301–713–1401.

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

**FOR FURTHER INFORMATION CONTACT:** Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

### Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Green turtle (*Chelonia mydas*), Kemp's ridley turtle (*Lepidochelys kempii*), Loggerhead turtle (*Caretta caretta*).

**Modification Requests Received**

The applicant requests a modification to Permit 1144. Permit 1144 authorizes the sampling for and collection of green, loggerhead and Kemp's ridley turtles in the Ft. Pierce Inlet, for the purposes of stock assessment to characterize the sea turtles that use the southern Indian River Lagoon System. Captured turtles will be weighed, photographed, measured, tagged and released. Modification #2 would extend the permit expiration date from July 31, 2000 to July 31, 2003.

Dated: June 16, 2000.

**Craig Johnson,**

*Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–15664 Filed 6–20–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

## United States Patent and Trademark Office

**RIN 0651–AB23**

## Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112, ¶ 6

June 16, 2000.

**AGENCY:** United States Patent and Trademark Office, Commerce.

**ACTION:** Notice.

**SUMMARY:** The U.S. Patent and Trademark Office (USPTO) is publishing the final supplemental examination guidelines to be used by Office personnel in their review of patent applications to determine (1) whether a claim limitation invokes 35 U.S.C. 112, ¶ 6, and (2) whether the written description describes adequate corresponding structure, material, or acts needed to support a claim limitation under 35 U.S.C. 112, ¶ 6. Because these supplemental examination guidelines are interpretive rules and general statements of policy, they are exempt from notice and comments rulemaking under 5 U.S.C. 553(b)(A).

**DATES:** The supplemental examination guidelines are effective June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Magdalen Greenlief, by mail addressed to Box Comments, Commissioner for Patents, Washington, DC 20231, or Ray Chen, Office of the Solicitor, P.O. Box 15667, Arlington, Virginia 22215, or by facsimile transmission to (703) 305–8825, or by electronic mail at *magdalen.greenlief@uspto.gov* or *ray.chen@uspto.gov.*

**SUPPLEMENTARY INFORMATION:** The USPTO published ''Interim Supplemental Examination Guidelines for Determining the Applicability of 35 U.S.C. 112 ¶ 6'' in the **Federal Register** on July 30, 1999, at 64 FR 41392, requesting comments from the public on the supplemental examination guidelines. The interim supplemental examination guidelines are adopted with modifications as suggested by some of the commentors noted below. In particular, (1) a statement has been added to the supplemental examination guidelines to clearly state that the guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law, (2) the third prong of the 3-prong analysis for determining whether a claim limitation invokes 35 U.S.C. 112, ¶ 6 has been modified to indicate that the phrase ''means for'' or ''step for'' must not be modified by sufficient structure, material, or acts for achieving the specified function, and (3) the last step of the process for making a *prima facie* case of equivalence of a prior art element during *ex parte* examination has been modified to state that where the examiner finds that the prior art element is an equivalent of the means- (or step-) plus-function limitation, the examiner should provide an explanation and rationale as to why the prior art element is an equivalent.

**Discussion of Public Comments**

Comments were received by the USPTO from three individuals, two bar associations, one law firm and one corporation in response to the request for comments on the interim supplemental examination guidelines. All comments have been fully considered. One comment was directed to Markush-type claims which is not germane to the subject matter addressed in these guidelines and thus, a response has not been included in the discussion below. One comment indicated that the supplemental examination guidelines will work well since under the supplemental examination guidelines applicants can clearly invoke or not invoke 35 U.S.C. 112, ¶ 6 and examiners can clearly determine whether or not 35 U.S.C. 112, ¶ 6 has been invoked. Other comments generally supported the 3-prong analysis, but with certain modifications.

*Comment 1:* One comment indicated that it is not clear whether the guidelines are interpretative and without force of law, or are intended to be rules or regulations (or their equivalent) issued under 35 U.S.C. 6 and having the force of law. The commentor suggested that a specific statement be made as to the intent of the Office.

*Response:* The suggestion has been adopted. As stated in the ''Supplementary Information'' portion of the interim supplemental examination guidelines, these supplemental examination guidelines are interpretative rules and general statements of policy, and therefore, are exempt from notice and comment rulemaking under 5 U.S.C. 553(b)(A). The USPTO will further include a statement in the body of the guidelines to clearly state that the guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law.

*Comment 2:* One comment stated that the proposed guidelines put a great deal of emphasis on form over substance since a ''means'' is a means whether one uses that word or not.

*Response:* The Federal Circuit has stated that when an element of a claim does not use the term ''means,'' treatment as a means-plus-function claim element is generally not appropriate. *See Kemco Sales, Inc.* v. *Control Papers Co.,* 54 USPQ2d 1308, 1313 (Fed. Cir. 2000) (''absence of the word 'means'' creates a presumption that section 112, paragraph 6 has not been invoked''), *Al-Site Corp.* v. *VSI Int'l, Inc.,* 174 F.3d 1308, 1318, 50 USPQ2d 1161, 1166 (Fed. Cir. 1999) (''when an element of a claim does not use the term 'means,' treatment as a means-plus-function claim element is generally not appropriate''), *Mas-Hamilton Group* v. *LaGard, Inc.,* 156 F.3d 1206, 1213–15, 48 USPQ2d 1010, 1016–18 (Fed. Cir. 1998), and *Greenberg v. Ethicon Endo-Surgery Inc.,* 91 F.3d 1580, 1584, 39 USPQ2d 1783, 1787 (Fed. Cir. 1996) (''use of the term 'means'' (particularly as used in the phrase 'means for') generally invokes section 112(6) and that the use of a different formulation generally does not''). Even if the term ''means'' was used, the Federal Circuit has held, in certain circumstances, that the claim limitation does not invoke 35 U.S.C. 112, ¶ 6. *See Rodime PLC* v. *Seagate Tech., Inc.,* 174 F.3d 1294, 1303–04, 50 USPQ2d 1429, 1435–36 (Fed. Cir. 1999) (holding ''positioning means for moving'' does not invoke 35 U.S.C. 112, ¶ 6), and *Cole* v. *Kimberly-Clark Corp.,* 102 F.3d 524, 530–31, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996) (claim limitation ''perforation means * * * for tearing'' does not invoke 35 U.S.C. 112, ¶ 6). The supplemental examination guidelines provide applicants with a simple method for clearly stating their intent to invoke 35 U.S.C. 112, ¶ 6. The specific phraseology used by the applicant in a

claim limitation will determine whether the claim limitation invokes 35 U.S.C. 112, ¶ 6. Furthermore, by following the plain language of the statute, the language employed in the patent claim(s) will place the public on notice whether a claim limitation invokes 35 U.S.C. 112, ¶ 6.

*Comment 3:* One comment stated that the guidelines are contrary to statute and to the court interpretations of the statute since the Federal Circuit has expressly held that a claim is to be interpreted as under 35 U.S.C. 112, ¶ 6 even if the word ''means'' is not used as long as there is an object disclosed (*i.e.,* a means) coupled with a function (citing *Raytheon Co.* v. *Roper Corp.,* 724 F.2d 951, 220 USPQ 592 (Fed. Cir. 1983)).

*Response:* The USPTO believes that the supplemental examination guidelines are consistent with the statute and controlling precedent. As noted by the Federal Circuit in *Ethicon Inc.* v. *United States Surgical Corp.,* 135 F.3d 1456, 1463, 45 USPQ2d 1545, 1550 (Fed. Cir. 1998), *cert. denied,* 525 U.S. 923 (1998), ''use of the word 'means' gives rise to a 'presumption that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses.'' See also J. Rader's concurring opinion in *Seal-Flex, Inc.* v. *Athletic Track and Court Constr.,* 172 F.3d 836, 849–50, 50 USPQ2d 1225, 1233–34 (Fed. Cir. 1999), stating that use of the phrase ''step for'' in a method claim raises a presumption that 35 U.S.C. 112, ¶ 6 applies, whereas, use of the word ''step'' by itself or the phrase ''step of'' does not invoke a presumption that 35 U.S.C. 112, ¶ 6 applies. Because the scope of a claim limitation that invokes 35 U.S.C. 112, ¶ 6 is actually more limited than a claim limitation stated in structural terms, the Office wants to avoid inadvertent invocations of 35 U.S.C. 112, ¶ 6. *Cf. Kemco Sales, Inc.* v. *Control Papers Co.,* 54 USPQ2d 1308, 1316 (Fed. Cir. 2000) (where sealing of a flap inside an envelope pocket was not equivalent to sealing it outside the pocket). If a claim limitation does not include the phrase ''means for'' or ''step for,'' the examiner will not treat that claim limitation as invoking 35 U.S.C. 112, ¶ 6. As noted in the supplemental examination guidelines, if applicant wants that claim limitation to be subject to the provisions of 35 U.S.C. 112, ¶ 6, applicant may do so by following the options set forth in the explanation portion of the first prong of the 3-prong analysis. By providing applicant with the option of making a showing that even though the phrase is not used, the claim limitation should be treated under 35 U.S.C. 112, ¶ 6 since it is written as a function to be performed and does not recite sufficient structure, material, or acts to perform the claimed function, these supplemental examination guidelines are consistent with the Federal Circuit's interpretation of 35 U.S.C. 112, ¶ 6.

*Comment 4:* One comment suggested that to permit a claim drafter who does not use the phrase ''means for'' or ''step for'' to make a showing that the claim limitation should still be treated under 35 U.S.C. 112, ¶ 6, rather than amending the claim to include the ''means for'' or ''step for'' phrase, is unwise. The commentor suggested that the USPTO promulgate a rule to always require the use of the phrase ''means for'' or ''step for'' if applicant wishes to have a claim limitation be treated under 35 U.S.C. 112, ¶ 6. The commentor further stated that it is more important to have a clear and unambiguous, easily administered, bright-line rule for claim interpretation than it is to have the rule fine-tuned for tolerating all conceivable caprice in claim drafting.

*Response:* The suggestion has not been adopted. To promulgate a rule to always require applicant to use the phrase ''means for'' or ''step for'' in order to invoke 35 U.S.C. 112, ¶ 6 without providing applicant with an option to make a showing that even though the phrase is not used, the claim limitation should be treated under 35 U.S.C. 112, ¶ 6 since it is written as a function to be performed and does not recite sufficient structure, material, or acts to perform the claimed function would be inconsistent with the Federal Circuit's interpretation of 35 U.S.C. 112, ¶ 6. *See, e.g., Mas-Hamilton Group* v. *LaGard, Inc.,* 156 F.3d 1206, 1213–14, 48 USPQ2d 1010, 1016–17 (Fed. Cir. 1998) (''lever moving element for moving the lever'' and ''movable link member for holding the lever * * * and for releasing the lever'' were construed as means-plus-function limitations invoking 35 U.S.C. 112, ¶ 6).

*Comment 5:* One comment suggested that examiners should be instructed not to require that ''means for'' or ''step for'' language be used since applicants should be able to decide what language they choose to use in a claim.

*Response:* The suggestion has not been adopted. The USPTO wants to provide reasonable certainty that 35 U.S.C. 112, ¶ 6 is not invoked unless applicant wants the claim limitation to be subject to that provision. To avoid inadvertent invocations of 35 U.S.C. 112, ¶ 6, the supplemental examination guidelines set forth a 3-prong analysis which must be met before a claim limitation is treated under 35 U.S.C. 112, ¶ 6. As noted in the supplemental examination guidelines, a claim limitation that does not include the phrase ''means for'' or ''step for'' will not be treated by the examiner as invoking the provisions of 35 U.S.C. 112, ¶ 6. In such a case, the examiner will apply prior art to the claim limitation without the invocation of 35 U.S.C. 112, ¶ 6. In reply to the examiner's Office action, if applicant wishes to have the claim limitation treated under 35 U.S.C. 112, ¶ 6, applicant has the option to either amend the claim to include the phrase ''means for'' or ''step for'' or to make a showing that even though the phrase ''means for'' or ''step for'' is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts to perform the claimed function. If applicant does not wish to use the phrase ''means for'' or ''step for,'' under the supplemental examination guidelines, applicant must show that even though the phrase ''means for'' or ''step for'' is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts for performing those functions. *See Al-Site Corp.* v. *VSI Int'l, Inc.,* 174 F.3d 1308, 1318, 50 USPQ2d 1161, 1166–67 (Fed. Cir. 1999) (although the claim limitations ''eyeglass hanger member'' and ''eyeglass contacting member'' include a function, these claim limitations do not invoke 35 U.S.C. 112, ¶ 6 because the claims themselves contain sufficient structural limitations for performing those functions).

*Comment 6:* Two comments indicated that the presence of some structure should not prevent the invocation of the provisions of 35 U.S.C. 112, ¶ 6. The commentors suggested that the third prong of the 3-prong analysis be modified to read that ''the phrase 'means for' or 'step for' must not be modified by sufficient structure, material, or acts for achieving the claimed function,'' citing *Seal-Flex, Inc.* v. *Athletic Track and Court Constr.,* 172 F.3d 836, 50 USPQ2d 1225 (Fed. Cir. 1999), and *Unidynamics Corp.* v. *Automatic Prod. Int'l,* 157 F.3d 1311, 48 USPQ2d 1099 (Fed. Cir. 1998).

*Response:* A review of the case law indicates that the recitation of some structure in means- (or step-) plus-function element does not preclude the applicability of 35 U.S.C. 112, ¶ 6 when the structure merely serves to further specify the function of that means. *See Laitram Corp.* v. *Rexnord, Inc.,* 939 F.2d 1533, 1536, 19 USPQ2d 1367, 1369 (Fed. Cir. 1991). Therefore, the suggestion has been adopted to this extent.

*Comment 7:* One comment suggested that the guidelines be clarified to

indicate what happens if the applicant neither amends the claim to include the phrase ''means for'' or ''step for'' nor makes a showing but stands firm on the claim that the applicant initially presented and insists that 35 U.S.C. 112, ¶ 6 authorizes the claim. The commentor indicated that explanation of this point will benefit the applicants and the examiners.

*Response:* If a claim limitation does not include the phrase ''means for'' or ''step for,'' the claim limitation will not be treated by the examiner as invoking the provisions of 35 U.S.C. 112, ¶ 6. The examiner in such case will apply prior art to the claim limitation without the invocation of 35 U.S.C. 112, ¶ 6.

In reply to the examiner's Office action, if applicant either refuses to amend the claim to include the phrase ''means for'' or ''step for'' or refuses to make a showing that even though the phrase ''means for'' or ''step for'' is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts to perform the claimed function, the next Office action may be made final in accordance with the practice of making a second or subsequent action final (see MPEP 706.07(a)). Applicant may appeal the examiner's rejection to the Board of Patent Appeals and Interferences pursuant to 35 U.S.C. 134.

*Comment 8:* One comment suggested that the examining corps should be encouraged, and preferably required, to include a statement regarding 35 U.S.C. 112, ¶ 6 in all Office actions where appropriate so that applicants may agree with or argue against the examiner's position.

*Response:* The suggestion is adopted in part. In those instances where a claim limitation meets the 3-prong analysis as set forth in the supplemental examination guidelines and is being treated under 35 U.S.C. 112, ¶ 6, the examiner will include a statement in the Office action that the claim limitation is being treated under 35 U.S.C. 112, ¶ 6. However, if a claim limitation does not use the phrase ''means for'' or ''step for,'' that is, the first prong of the 3-prong analysis is not met, the examiner will not treat such a claim limitation under 35 U.S.C. 112, ¶ 6. It will not be necessary to state in the Office action that 35 U.S.C. 112, ¶ 6 has not been invoked, since the presumption is that applicant did not intend to invoke the provisions of 35 U.S.C. 112, ¶ 6 because applicant did not use the specific phrase ''means for'' or ''step for.'' If a claim limitation does include the phrase ''means for'' or ''step for,'' that is, the first prong of the 3-prong analysis is met, but the examiner determines that either the second prong or the third prong of the 3-prong analysis is not met, then in these instances, the examiner must include a statement in the Office action explaining the reasons why a claim limitation which uses the phrase ''means for'' or ''step for'' is not being treated under 35 U.S.C. 112, ¶ 6.

*Comment 9:* One comment suggested that 35 U.S.C. 112, ¶ 6 was not intended to address functional language used for mere background and away from the point of novelty and that the Federal Circuit has not directly addressed the use of functional language other than when it occurs at the point of novelty. The commentor stated that examiners need not go through the 3-prong analysis where the functional claiming language is not at the point of novelty since 35 U.S.C. 112, ¶ 6 does not apply to such claim limitations. The commentor further stated that rejection for failure to use the ''means for'' or ''step for'' language of 35 U.S.C. 112, ¶ 6 would be proper for, and only for, a claim to subject matter that Congress intended 35 U.S.C. 112, ¶ 6 to address (at the point of novelty). The commentor suggested that the guidelines be modified accordingly.

*Response:* The suggestion has not been adopted. In a recent decision, *Clearstream Wastewater Sys., Inc.* v. *Hydro-Action, Inc.,* 54 USPQ2d 1185, 1188–90 (Fed. Cir. 2000), the Federal Circuit held that the district court erred in concluding that the means limitations for the aerating system could only cover new elements of the preferred embodiment. The means-plus-function limitation was ''means for aerating.'' The written description disclosed both a new and inventive flexible-hose structure and a prior art, rigid-conduit structure as corresponding structures for performing the claimed function. The Federal Circuit read the means-plus-function terms for the aerating system in the claims as being capable of covering the old, rigid-conduit system as well as the new, flexible-hose system. Furthermore, it is noted that examiners do not reject a claim for failure to use the ''means for'' or ''step for'' language of 35 U.S.C. 112, ¶ 6. There is no statutory basis for such a rejection. If a claim limitation does not include the phrase ''means for'' or ''step for,'' the presumption is that applicant did not intend to invoke 35 U.S.C. 112, ¶ 6 and the examiner will not treat the claim limitation under 35 U.S.C. 112, ¶ 6.

*Comment 10:* One comment stated that where the examiner has concluded that one skilled in the art would recognize what structure, material, or acts perform the function, it does not make sense to require that the applicant amend the specification to expressly recite what corresponding structure, material, or acts perform the function recited in a claim element. Furthermore, the commentor finds it even more troubling to have the examiner, at his option, state on the record what structure, material, or acts perform the claimed function since there is a danger of unfairly limiting the scope of the claims.

*Response:* The USPTO disagrees with the comment. In *B. Braun Medical, Inc.* v. *Abbott Lab.,* 124 F.3d 1419, 1424, 43 USPQ2d 1896, 1900 (Fed. Cir. 1997) the Federal Circuit stated that ''structure disclosed in the specification is 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. This duty to link or associate structure to function is the *quid pro quo* for the convenience of employing Section 112, Para. 6.'' It is important to have a clear prosecution history file record. See *Warner-Jenkinson Co.* v. *Hilton Davis Chem. Co.,* 520 U.S. 17, 41 USPQ2d 1865 (1997); *York Prods., Inc. v. Central Tractor Farm & Family Ctr.,* 99 F.3d 1568, 1575, 40 USPQ2d 1619, 1624 (Fed. Cir. 1996) (''the record before the Patent and Trademark Office is often of critical significance in determining the meaning of the claims''). 35 U.S.C. 112, ¶ 6 states that ''[a]n element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof'' (emphasis added). If the disclosure implicitly sets forth the structure, material, or acts corresponding to a means-(or step-) plus-function claim limitation and the examiner concludes that one skilled in the art would recognize what structure, material, or acts perform the claimed function, the examiner may still require applicant, pursuant to 37 CFR 1.75 (d)(1), to clarify the record by amending the written description such that it expressly recites what structure, material, or acts perform the claimed function. If applicant chooses not to amend the written description to clarify the record, it is incumbent upon the examiner in exercising his or her responsibility to see that the file history is as complete as is reasonably possible. The examiner may do so by stating on the record what structure, material, or acts perform the function recited in the means-plus-function limitation. If

applicant disagrees with the examiner's statement, applicant has the obligation to clarify the record by submitting a reply explaining the reasons why applicant disagrees with the statement made by the examiner.

*Comment 11:* One comment stated that ''[t]o use the convenience of functional claim elements under Section 112(6), an applicant, therefore, must explicitly describe and link structure within the specification with the corresponding functional claim element.'' The commentor further stated that the USPTO's reliance on the very fact specific decision of *In re Dossel,* to permit applicant to implicitly set forth the structure corresponding to a means-plus-function limitation in the written description, is misplaced. The commentor suggested that the guidelines be modified to state that where the written description only implicitly or inherently sets forth the structure, material, or acts corresponding to a means-(or step-) plus-function, the examiner *must* require applicant to explicitly describe or link a structure within the specification to the corresponding functional claim element.

*Response:* The comment has not been adopted. In a recent decision, *Atmel Corp.* v. *Information Storage Devices Inc.,* 198 F.3d 1374, 1379, 53 USPQ2d 1225, 1228 (Fed. Cir. 1999), the Federal Circuit stated that ''the 'one skilled in the art' mode of analysis applies with equal force when determining whether a 112 ¶ 6 means-plus-function limitation is sufficiently definite under 112 ¶ 2.'' The court further stated that the interim supplemental examination guidelines published by the USPTO, which stated that the ''disclosure of structure corresponding to a means-plus-function limitation may be implicit in the written description if it would have been clear to those skilled in the art what structure must perform the function recited in the means-plus-function limitation,'' is consistent with the court's holding in the case. In order to make the file record clear, the examiner should, pursuant to 37 CFR 1.75(d)(1), require applicant to amend the written description to expressly recite what structure, material, or acts perform the function recited in the claim or the examiner could state on the record what structure, material, or acts perform the function recited in the claim.

*Comment 12:* One comment was directed to the process for making a *prima facie* case of equivalence of a prior art element. The commentor stated that even though this process is not superseded by these interim supplemental guidelines, the commentor is of the opinion that the process is inconsistent with the Federal Circuit ruling in *In re Donaldson,* 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994). In particular, the guidelines state that if the examiner finds that the prior art element performs the claimed function and is not excluded by any explicit definition provided in the specification for an equivalent, the examiner has met the *prima facie* case of equivalence. The commentor stated that this amounts to ignoring the means disclosed in the specification contrary to *Donaldson.* The commentor suggested that the test for equivalents should be modified to require the examiner to provide a rationale for why the prior art element is an equivalent to the claimed means since such a rationale is necessary in order to make out a *prima facie* case of equivalence.

*Response:* The comment has been adopted. The supplemental examination guidelines have been modified to state that if the examiner finds that (1) a prior art element performs the claimed function, (2) the prior art element is not excluded by any explicit definition provided in the specification for an equivalent, and (3) the prior art element is an equivalent, the examiner should provide an explanation and rationale in the Office action as to why the prior art element is an equivalent to the claimed means. Factors that will support a conclusion that the prior art element is an equivalent are:

(1) The prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification. *Odetics, Inc.* v. *Storage Tech. Corp.,* 185 F.3d 1259, 1267, 51 USPQ2d 1225, 1229–30 (Fed. Cir. 1999);

(2) A person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in the specification. *Al-Site Corp.* v. *VSI Int'l, Inc.,* 174 F.3d 1308, 1316, 50 USPQ2d 1161, 1165 (Fed. Cir. 1999); *Chiuminatta Concrete Concepts, Inc.* v. *Cardinal Indus.,* 145 F.3d 1303, 1309, 46 USPQ2d 1752, 1757 (Fed. Cir. 1998); *Lockheed Aircraft Corp.* v. *United States,* 553 F.2d 69, 83, 193 USPQ 449, 461 (Ct. Cl. 1977);

(3) There are insubstantial differences between the prior art element and the corresponding element disclosed in the specification. *IMS Tech., Inc.* v. *Haas Automation, Inc.*, 206 F.3d 1422, 1436, 54 USPQ2d 1129, 1138 (Fed. Cir. 2000); *Valmont Indus.* v. *Reinke Mfg. Co.*, 983 F.2d 1039, 1043, 25 USPQ2d 1451, 1455 (Fed. Cir. 1993);

(4) The prior art element is a structural equivalent of the corresponding element disclosed in the specification. *In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

A showing of at least one of the above-noted factors by the examiner should be sufficient to support a conclusion that the prior art element is an equivalent of the means-(or step-) plus-function limitation. The examiner should then conclude that the claimed limitation is met by the prior art element. In addition to the conclusion that the prior art element is an equivalent, examiners should also demonstrate, where appropriate, why it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute applicant's described structure, material, or acts for that described in the prior art reference. *See In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972). The burden then shifts to applicant to show that the prior art element is not an equivalent of the structure, material, or acts disclosed in the application. *See In re Mulder*, 716 F.2d 1542, 1549, 219 USPQ 189, 196 (Fed. Cir. 1983). This three-step process is consistent with the requirement that the USPTO gives claims their broadest reasonable interpretation. *See In re Donaldson Co.*, 16 F.3d 1189, 1194, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (stating that 35 U.S.C. 112, ¶ 6 ''merely sets a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation'''). The USPTO believes that this three-step process for making a *prima facie* case of equivalence is consistent with binding precedent of the Federal Circuit.

*Comment 13:* One comment stated the USPTO does not have the authority to alter substantive law, and thus, the USPTO must either go to the Supreme Court or to Congress to obtain an amendment to 35 U.S.C. 112, ¶ 6.

*Response:* The suggestion has not been adopted. As noted in the response to comment 12 above, the USPTO believes that these supplemental examination guidelines are consistent with the Federal Circuit's interpretation of 35 U.S.C. 112, ¶ 6.

**I. Supplemental Examination Guidelines for Claims Subject to 35 U.S.C. 112, ¶ 6**

In February 1994, the Court of Appeals for the Federal Circuit (Federal Circuit) held in an en banc decision that ''the 'broadest reasonable interpretation' that an examiner may give means-plus-function language is that statutorily mandated in (35 U.S.C. 112, ¶ 6) * * *

[T]he PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination.'' *In re Donaldson Co.*, 16 F.3d 1189, 1194–95, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (en banc). In May 1994, the United States Patent and Trademark Office (USPTO) issued guidelines implementing changes in examination practice in response to *Donaldson. See Means or Step Plus Function Limitation Under 35 U.S.C. 112, ¶6;* Notice, 1162 *Off. Gaz. Pat. Office* 59 (May 17, 1994) (''1994 Guidelines'').

The 1994 Guidelines note that there is no ''magic'' language that invokes 35 U.S.C. 112, ¶ 6.[1] However, to establish uniformity to the extent possible, in view of the recent case law, and to make the prosecution record clearer, these guidelines supplement the 1994 Guidelines in assisting examiners to determine when 35 U.S.C. 112, ¶ 6 should be applied. To the extent these supplemental guidelines are inconsistent with the 1994 Guidelines, the supplemental guidelines are controlling.

These supplemental examination guidelines are based on the Office's current understanding of the law and are believed to be fully consistent with binding precedent of the Supreme Court, the Federal Circuit and the Federal Circuit's predecessor courts. These supplemental examination guidelines do not constitute substantive rulemaking and hence do not have the force and effect of law.

The USPTO must apply 35 U.S.C. 112, ¶ 6 in appropriate cases, and give claims their broadest reasonable interpretation, in light of and consistent with the written description of the invention in the application.[2] Thus, a claim limitation will be interpreted to invoke 35 U.S.C. 112, ¶ 6 if it meets the following 3-prong analysis:

(1) The claim limitations must use the phrase ''means for'' or ''step for'';[3]

(2) the ''means for'' or ''step for'' must be modified by functional language;[4] and

(3) the phrase ''means for'' or ''step for'' must not be modified by sufficient structure, material, or acts for achieving the specified function.[5]

With respect to the first prong of this analysis, a claim element that does not include the phrase ''means for'' or ''step for'' will not be considered to invoke 35 U.S.C. 112, ¶ 6. If an applicant wishes to have the claim limitation treated under 35 U.S.C. 112, ¶ 6, applicant must either (1) amend the claim to include the phrase ''means for'' or ''step for'' in accordance with these guidelines, or (2) show that even though the phrase ''means for'' or ''step for'' is not used, the claim limitation is written as a function to be performed and does not recite sufficient structure, material, or acts which would preclude application of 35 U.S.C. 112, ¶ 6.[6]

Accordingly, these supplemental examination guidelines provide applicants with the opportunity to either invoke or not invoke 35 U.S.C. 112, ¶ 6 based upon a clear and simple set of criteria.

**II. Procedures for Determining Whether the Written Description Adequately Describes the Corresponding Structure, Material, or Acts Necessary To Support a Claim Limitation Which Invokes 35 U.S.C. 112, ¶ 6**

If a claim limitation invokes 35 U.S.C. 112, ¶ 6, it must be interpreted to cover the corresponding structure, material, or acts in the specification and ''equivalents thereof.''[7] If the written description fails to set forth the supporting structure, material or acts corresponding to the means-(or step-) plus-function, the claim may not meet the requirement of 35 U.S.C. 112, ¶ 2:

> Although [35 U.S.C. 112, ¶ 6] statutorily provides that one may use means-plus-function language in a claim, one is still subject to the requirement that a claim ''particularly point out and distinctly claim'' the invention. Therefore, if one employs means-plus-function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by [35 U.S.C. 112, ¶ 2].[8]

Whether a claim reciting an element in means-(or step-) plus-function language fails to comply with 35 U.S.C. 112, ¶ 2 because the specification does not disclose adequate structure (or material or acts) for performing the recited function is closely related to the question of whether the specification meets the description requirement in 35 U.S.C. 112, ¶ 1.[9] However, 35 U.S.C. 112, ¶ 6 does not impose any requirements in addition to those imposed by 35 U.S.C. 112, ¶ 1.[10] Conversely, the invocation of 35 U.S.C. 112, ¶ 6 does not exempt an applicant from compliance with 35 U.S.C. 112, ¶¶ 1 and 2.[11]

Under certain limited circumstances, the written description does not have to explicitly describe the structure (or material or acts) corresponding to a means-(or step-) plus-function limitation to particularly point out and distinctly claim the invention as required by 35 U.S.C. 112, ¶ 2.[12] Rather, disclosure of structure corresponding to a means-plus-function limitation may be implicit in the written description if it would have been clear to those skilled in the art what structure must perform the function recited in the means-plus-function limitation.[13] However, the claims must still be analyzed to determine whether there exists corresponding adequate support for such claim under 35 U.S.C. 112, ¶ 1.[14]

Therefore, a means-(or step-) plus-function claim limitation satisfies 35 U.S.C. 112, ¶ 2 if: (1) The written description links or associates particular structure, material, or acts to the function recited in a means-(or step-) plus-function claim limitation; or (2) it is clear based on the disclosure in the application that one skilled in the art would have known what structure, material, or acts perform the function recited in a means-(or step-) plus-function limitation.

37 CFR 1.75(d)(1) provides, in part, that ''the terms and phrases used in the claims must find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description.'' In the situation in which the written description only implicitly or inherently sets forth the structure, material, or acts corresponding to a means-(or step-) plus-function, and the examiner concludes that one skilled in the art would recognize what structure, material, or acts perform the function recited in a means-(or step-) plus-function, the examiner should either (1) have the applicant clarify the record by amending the written description such that it expressly recites what structure, material, or acts perform the function recited in the claim element[15] or (2) state on the record what structure, material, or acts perform the function recited in the means-(or step-) plus-function limitation.

**III. Making a Prima Facie Case of 35 U.S.C. 112, ¶ 6 Equivalence**

If the examiner finds that a prior art element (1) performs the function specified in the claim, (2) is not excluded by any explicit definition provided in the specification for an equivalent, and (3) is an equivalent of the means-(or step-) plus-function limitation, the examiner should provide an explanation and rationale in the Office action as to why the prior art element is an equivalent. Factors that will support a conclusion that the prior art element is an equivalent are:

(1) The prior art element performs the identical function specified in the claim in substantially the same way, and

produces substantially the same results as the corresponding element disclosed in the specification; [16]

(2) A person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in the specification; [17]

(3) There are insubstantial differences between the prior art element and the corresponding element disclosed in the specification; [18]

(4) The prior art element is a structural equivalent of the corresponding element disclosed in the specification.[19]

A showing of at least one of the above-noted factors by the examiner should be sufficient to support a conclusion that the prior art element is an equivalent. The examiner should then conclude that the claimed limitation is met by the prior art element. In addition to the conclusion that the prior art element is an equivalent, examiners should also demonstrate, where appropriate, why it would have been obvious to one of ordinary skill in the art at the time of the invention to substitute applicant's described structure, material, or acts for that described in the prior art reference. *See In re Brown*, 459 F.2d 531, 535, 173 USPQ 685, 688 (CCPA 1972). The burden then shifts to applicant to show that the prior art element is not an equivalent of the structure, material, or acts disclosed in the application. *See In re Mulder*, 716 F.2d 1542, 1549, 219 USPQ 189, 196 (Fed. Cir. 1983).

To the extent that the three-step process for making a *prima facie* case of equivalence of a prior art element during *ex parte* examination set forth in these supplemental examination guidelines is inconsistent with the 1994 Guidelines, the supplemental examination guidelines control. The supplemental examination guidelines are consistent with the requirement that the USPTO give claims their broadest reasonable interpretation.[20] The specification need not describe the equivalents of the structures, material, or acts corresponding to the means-(or step-) plus-function claim element.[21] Where, however, the specification is silent as to what constitutes equivalents and the examiner has made out a *prima facie* case of equivalence, the burden is placed upon the applicant to show that a prior art element which performs the claimed function is not an equivalent of the structure, material, or acts disclosed in the specification.[22]

**Endnotes**

1. *See* 1994 Guidelines at 59.

2. *See In re Donaldson Co.*, 16 F.3d 1189, 1194, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (in banc) (stating that 35 U.S.C. 112, ¶ 6 ''merely sets a limit on how broadly the PTO may construe means-plus-function language under the rubric of 'reasonable interpretation'''). The Federal Circuit has held that applicants (and reexamination patentees) before the USPTO have the opportunity and the obligation to define their inventions precisely during proceedings before the PTO. *See In re Morris*, 127 F.3d 1048, 1056–57, 44 USPQ2d 1023, 1029–30 (Fed. Cir. 1997)(35 U.S.C. 112, ¶ 2 places the burden of precise claim drafting on the applicant); *In re Zletz*, 893 F.2d 319, 322, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (manner of claim interpretation that is used by courts in litigation is not the manner of claim interpretation that is applicable during prosecution of a pending application before the PTO); *Sage Prods., Inc.* v. *Devon Indus., Inc.*, 126 F.3d 1420, 1425, 44 USPQ2d 1103, 1107 (Fed. Cir. 1997) (patentee who had a clear opportunity to negotiate broader claims during prosecution but did not do so, may not seek to expand the claims through the doctrine of equivalents, for it is the patentee, not the public, who must bear the cost of its failure to seek protection for this foreseeable alteration of its claimed structure). Thus, applicants and reexamination patentees before the USPTO have an opportunity and obligation to specify, consistent with these supplemental guidelines, when a claim limitation invokes 35 U.S.C. 112, ¶ 6.

3. *Cf. Seal-Flex, Inc.* v. *Athletic Track and Court Constr.*, 172 F.3d 836, 849–50, 50 USPQ2d 1225, 1233–34 (Fed. Cir. 1999) (Rader, J., concurring) (use of the phrase ''step for'' in a method claim raises a presumption that 35 U.S.C. 112, ¶ 6 applies, whereas, use of the word ''step'' by itself or the phrase ''step of'' does not invoke a presumption that 35 U.S.C. 112, ¶ 6 applies); *Ethicon, Inc.* v. *United States Surgical Corp.*, 135 F.3d 1456, 1463, 45 USPQ2d 1545, 1550 (Fed. Cir. 1998), *cert. denied*, 525 U.S. 923 (1998) (''use of the word 'means' gives rise to 'a presumption that the inventor used the term advisedly to invoke the statutory mandates for means-plus-function clauses' ''); *O.I. Corp.* v. *Tekmar*, 115 F.3d 1576, 1583, 42 USPQ2d 1777, 1782 (Fed. Cir. 1997) (method claim that paralleled means-plus-function apparatus claim but lacked ''step for'' language did not invoke 35 U.S.C. 112, ¶ 6). Thus, absent an express recitation of ''means for'' or ''step for'' in the limitation, the broadest reasonable interpretation will not be limited to ''corresponding structure * * * and equivalents thereof.'' *Cf. Morris*, 127 F.3d at 1055, 44 USPQ2d at 1028 (''no comparable mandate in the patent statute that relates the claim scope of non-§ 112 ¶ 6 claims to particular matter found in the specification'').

4. *See York Prods., Inc.* v. *Central Tractor Farm & Family Ctr.*, 99 F.3d 1568, 1574, 40 USPQ2d 1619, 1624 (Fed. Cir. 1996) (holding that a claim limitation containing the term ''means'' does not invoke 35 U.S.C. 112, ¶ 6 if the claim limitation does not link the term ''means'' to a specific function).

5. *See Seal-Flex*, 172 F.3d at 849, 50 USPQ2d at 1234 (Rader, J., concurring) (''Even when a claim element uses language that generally falls under the step-plus-function format, however, 112 ¶ 6 still does not apply when the claim limitation itself recites sufficient acts for performing the specified function''). *Cf. Rodime PLC* v. *Seagate Tech., Inc.*, 174 F.3d 1294, 1303–04, 50 USPQ2d 1429, 1435–36 (Fed. Cir. 1999) (holding ''positioning means for moving'' does not invoke 35 U.S.C. 112, ¶ 6 because the claim further provides a list of the structure underlying the means and the detailed recitation of the structure for performing the moving function removes this element from the purview of 35 U.S.C. 112, ¶ 6); *Cole* v. *Kimberly-Clark Corp.*, 102 F.3d 524, 531, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996) (holding ''perforation means * * * for tearing'' does not invoke 35 U.S.C. 112, ¶ 6 because the claim describes the structure supporting the tearing function (*i.e.,* perforation)). In other cases, the Federal Circuit has held otherwise. *See Unidynamics Corp.* v. *Automatic Prod. Int'l*, 157 F.3d 1311, 1319, 48 USPQ2d 1099, 1104 (Fed. Cir. 1998) (holding ''spring means'' does invoke 35 U.S.C. 112, ¶ 6). During examination, however, applicants have the opportunity and the obligation to define their inventions precisely, including whether a claim limitation invokes 35 U.S.C. 112, ¶ 6. Thus, if the phrase ''means for'' or ''step for'' is modified by sufficient structure, material, or acts for achieving the specified function, the USPTO will not apply 35 U.S.C. 112, ¶ 6 until such modifying language is deleted from the claim limitation. *See also supra* note 1.

6. While traditional ''means for'' or ''step for'' language does not automatically make an element a means-(or step-) plus-function element, conversely, lack of such language does not necessarily prevent a limitation from being construed as a means-(or step-) plus-function limitation. *See Signtech USA, Ltd.* v. *Vutek, Inc.,* 174 F.3d 1352, 1356–57, 50 USPQ2d 1372, 1374–75 (Fed. Cir. 1999) (''ink delivery means positioned on * * *'' invokes 35 U.S.C. 112, ¶ 6 since the phrase ''ink delivery means'' is equivalent to ''means for ink delivery''); *Al-Site Corp.* v. *VSI Int'l, Inc.,* 174 F.3d 1308, 1317–19, 50 USPQ2d 1161, 1166–67 (Fed. Cir. 1999) (although the claim elements ''eyeglass hanger member'' and ''eyeglass contacting member'' include a function, these claim elements do not invoke 35 U.S.C. 112, ¶ 6 because the claims themselves contain sufficient structural limitations for performing those functions); *Seal-Flex,* 172 F.3d at 849, 50 USPQ2d at 1234 (Rader, J., concurring) (''claim elements without express step-plus-function language may nevertheless fall within 112 ¶ 6 if they merely claim the underlying function without recitation of acts for performing that function . . . In general terms, the 'underlying function' of a method claim element corresponds to what that element ultimately accomplishes in relationship to what the other elements of the claim and the claim as a whole accomplish. 'Acts,' on the other hand, correspond to how the function is accomplished.); *Personalized Media Communications LLC* v. *ITC,* 161 F.3d 696, 703–04, 48 USPQ2d 1880, 1886–87 (Fed. Cir. 1998); *Mas-Hamilton Group* v. *LaGard, Inc.,*

156 F.3d 1206, 1213, 48 USPQ2d 1010, 1016 (Fed. Cir. 1998) (''lever moving element for moving the lever'' and ''movable link member for holding the lever * * * and for releasing the lever'' were construed as means-plus-function limitations invoking 35 U.S.C. 112, ¶ 6 since the claimed limitations were described in terms of their function, not their mechanical structure).

7. *See* 35 U.S.C. 112, ¶ 6. *See also B. Braun Medical, Inc. v. Abbott Lab.*, 124 F.3d 1419, 1424, 43 USPQ2d 1896, 1899 (Fed. Cir. 1997).

8. *See Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850; *see also B. Braun Medical*, 124 F.3d at 1425, 43 USPQ2d at 1900; and *In re Dossel*, 115 F.3d 942, 946, 42 USPQ2d 1881, 1884–85 (Fed. Cir. 1997).

9. *See In re Noll*, 545 F.2d 141, 149, 191 USPQ 721, 727 (CCPA 1976) (unless the means-plus-function language is itself unclear, a claim limitation written in means-plus-function language meets the definiteness requirement in 35 U.S.C. 112, ¶ 2 so long as the specification meets the written description requirement in 35 U.S.C. 112, ¶ 1).

10. *See In re Knowlton*, 481 F.2d 1357, 1366, 178 USPQ 486, 492–93 (CCPA 1973).

11. *See Donaldson*, 16 F.3d at 1195, 29 USPQ2d at 1850; *Knowlton*, 481 F.2d at 1366, 178 USPQ at 493.

12. *See Dossel*, 115 F.3d at 946, 42 USPQ2d at 1885. Under proper circumstances, drawings may provide a written description of an invention as required by 35 U.S.C. 112. *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1565, 19 USPQ2d 1111, 1118 (Fed. Cir. 1991).

13. *See Atmel Corp. v. Information Storage Devices Inc.*, 198 F.3d 1374, 1379, 53 USPQ2d 1225, 1228 (Fed. Cir. 1999) (stating that the ''one skilled in the art'' analysis should apply in determining whether sufficient structure has been disclosed to support a means-plus-function limitation and that the USPTO's recently issued proposed Supplemental Guidelines are consistent with the court's holding on this point); *Dossel*, 115 F.3d at 946–47, 42 USPQ2d at 1885 (''Clearly, a unit which receives digital data, performs complex mathematical computations and outputs the results to a display must be implemented by or on a general or special purpose computer (although it is not clear why the written description does not simply state 'computer' or some equivalent phrase.)'').

14. In considering whether there is 35 U.S.C. 112, ¶ 1 support for the claim limitation, the examiner must consider not only the original disclosure contained in the summary and detailed description of the invention portions of the specification, but also the original claims, abstract, and drawings. *See In re Mott*, 539 F.2d 1291, 1299, 190 USPQ 536, 542–43 (CCPA 1976) (claims); *In re Anderson*, 471 F.2d 1237, 1240, 176 USPQ 331, 333 (CCPA 1973) (claims); *Hill-Rom Co. v. Kinetic Concepts, Inc.*, 54 USPQ2d 1437 (Fed. Cir. 2000) (abstract); *In re Armbruster*, 512 F.2d 676, 678–79, 185 USPQ 152, 153–54 (CCPA 1975) (abstract); Anderson, 471 F.2d at 1240, 176 USPQ at 333 (abstract); *Vas-Cath Inc. v. Mahurkar*, 935 F.2d 1555, 1564, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991) (drawings); *In re Wolfensperger*, 302 F.2d 950, 955–57, 133 USPQ 537, 541–43 (CCPA 1962) (drawings).

15. Even if the disclosure implicitly sets forth the structure, material, or acts corresponding to a means-(or step-) plus-function claim element in compliance with 35 U.S.C. 112, ¶¶ 1 and 2, the USPTO may still require the applicant to amend the specification pursuant to 37 CFR 1.75(d) and MPEP 608.01(o) to explicitly state, with reference to the terms and phrases of the claim element, what structure, material, or acts perform the function recited in the claim element. *See* 35 U.S.C. 112, ¶ 6 (''An element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts *described in the specification* and equivalents thereof.'' (emphasis added)); *see also B. Braun Medical*, 124 F.3d at 1424, 43 USPQ2d at 1900 (holding that ''pursuant to this provision [35 U.S.C. 112, ¶ 6], structure disclosed in the specification is 'corresponding' structure only if the specification or prosecution history clearly links or associates that structure to the function recited in the claim. This duty to link or associate structure to function is the *quid pro quo* for the convenience of employing 112, paragraph 6.''); *Wolfensperger*, 302 F.2d at 955, 133 USPQ at 542 (just because the disclosure provides support for a claim element does not mean that the USPTO cannot enforce its requirement that the terms and phrases used in the claims find clear support or antecedent basis in the written description).

16. *Kemco Sales, Inc. v. Control Papers Co.*, 54 USPQ2d 1308, 1315 (Fed. Cir. 2000); *Odetics, Inc. v. Storage Tech. Corp.*, 185 F.3d 1259, 1267, 51 USPQ2d 1225, 1229–30 (Fed. Cir. 1999).

17. *Al-Site Corp. v. VSI Int'l, Inc.*, 174 F.3d 1308, 1316, 50 USPQ2d 1161, 1165 (Fed. Cir. 1999); *Chiuminatta Concrete Concepts, Inc. v. Cardinal Indus., Inc.*, 145 F.3d 1303, 1309, 46 USPQ2d 1752, 1757 (Fed. Cir. 1998); *Lockheed Aircraft Corp. v. United States*, 553 F.2d 69, 83, 193 USPQ 449, 461 (Ct. Cl. 1977).

18. *IMS Technology, Inc. v. Haas Automation, Inc.*, 206 F.3d 1422, 1436, 54 USPQ2d 1129, 1138 (Fed. Cir. 2000); *Valmont Indus. v. Reinke Mfg. Co.*, 983 F.2d 1039, 1043, 25 USPQ2d 1451, 1455 (Fed. Cir. 1993).

19. *In re Bond*, 910 F.2d 831, 833, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

20. *See Donaldson*, 16 F.3d at 1194, 29 USPQ2d at 1850 (stating that 35 U.S.C. 112, ¶ 6 ''merely sets a limit on how broadly the USPTO may construe means-plus-function language under the rubric of 'reasonable interpretation' '').

21. *See Noll*, 545 F.2d at 149–50, 191 USPQ at 727 (the meaning of equivalents is well understood in patent law, and an applicant need not describe in his specification the full range of equivalents of his invention) (citation omitted). *Cf. Hybritech Inc. v. Monoclonal Antibodies, Inc.*, 802 F.2d 1367, 1384, 231 USPQ 81, 94 (Fed. Cir. 1986) (''a patent need not teach, and preferably omits, what is well known in the art'').

22. *See* 1994 Guidelines at 60; *see also In re Mulder*, 716 F.2d 1542, 1549, 219 USPQ 189, 196 (Fed. Cir. 1983).

Dated: June 15, 2000.

**Q. Todd Dickinson,**

*Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.*

[FR Doc. 00–15674 Filed 6–20–00; 8:45 am]

**BILLING CODE 3510–16–P**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments, if any.

**DATES:** Comments must be submitted on or before July 21, 2000.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Judi E. Payne at CFTC, (202) 418–5268; FAX: (202) 418–5527; email: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0017.

**SUPPLEMENTARY INFORMATION:**

*Title:* Market Surveys (OMB Control No. 3038–0017). This is a request for extension of a currently approved information collection.

*Abstract:* Sections 8(a)(i) and (ii) of the Commodity Exchange Act provide that for the efficient execution of the provisions of the Act and in order to inform Congress, the Commission may make investigations concerning futures markets and may publish general information from such investigations. In certain instances in response to abrupt and substantial changes in market prices, Congressional inquiry or other reasons, the Commission may conduct full market investigations requiring that all persons holding futures positions on the date in question in a specific market be identified. In such cases, the Commission issues its call for survey information pursuant to Commission Rule 21.02, 17 CFR 21.02.

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 9, 2000 (65 FR 26818).

*Burden statement:* The respondent burden for this collection is estimated to average 1.75 hours per response for such a survey. These estimates include 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; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 400.

*Estimated number of respondents:* 400.

*Estimated total annual burden on respondents:* 700 hours.

*Frequency of collection:* On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0017 in any correspondence.

Judi E. Payne, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581.

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 16, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–15676 Filed 6–20–00; 8:45 am]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments, if any.

**DATES:** Comments must be submitted on or before July 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Judi E. Payne at CFTC, (202) 418–5268; FAX: (202) 418–5527; email: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0018.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Concerning Warehouses (OMB Control No. 3038–0018). This is a request for extension of a currently approved information collection.

*Abstract:* Under Commission rules 1.42 and 1.43, 17 CFR 1.42 and 1.43, contract markets must file a list of all warehouse regular for delivery. Upon call by the Commission, a schedule of warehouses charges and information concerning delivery notices must also be furnished. These rules are designed to assist the Commission in the prevention of market manipulation and are promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

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 number for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 9, 2000 (65 FR 26817).

*Burden statement:* The respondent burden for this collection is estimated to average .168 hours per response. These estimates include 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 and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 11.

*Estimated number of respondents:* 1.

*Estimated total annual burden on respondents:* 30 hours.

*Frequency of collection:* Weekly.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0018 in any correspondence.

Judi E. Payne, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 16, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–15677 Filed 6–20–00; 8:45 am]

**BILLING CODE 6351–01–M**

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments, if any.

**DATES:** Comments must be submitted on or before July 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Judi E. Payne at CFTC, (202) 418–5268; FAX: (202) 418–5527; email: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0019.

**SUPPLEMENTARY INFORMATION:**

*Title:* Stocks of Grain in Licensed Warehouses (OMB Control No. 3038–0019). This is a request for extension of a currently approved information collection.

*Abstract:* Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in the prevention of market manipulation and are promulgated pursuant to the Commission's rulemaking authority

contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

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 the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 9, 2000 (65 FR 26816).

*Burden statement:* The respondent burden for this collection is estimated to average 1.04 hours per response. These estimates include 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; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 3.

*Estimated number of respondents:* 1.

*Estimated total annual burden on respondents:* 1,769 hours.

*Frequency of collection:* Weekly.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0019 in any correspondence.

Judi E. Payne, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581, and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 16, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–15678 Filed 6–20–00; 8:45 am]

**BILLING CODE 6351–01–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Partnership Council Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include: An update on the Blue Collar Wage Setting project; a partnership presentation by the Army Operations Support Command, AFGE Local 15 and NAGE R7–68; and other topics related to the enhancement of Labor-Management partnerships throughout DoD.

**DATES:** The meeting is to be held on July 26, 2000, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by July 19, 2000, in order to be considered at the July 26 meeting.

**ADDRESSES:** We invited interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Ben James at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben James, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd., Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 730.

Dated: June 15, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–15559 Filed 6–20–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the United States Commission on National Security/21st Century

**AGENCY:** Department of Defense, Office of the Undersecretary of Defense (Policy).

**ACTION:** Notice of closed meeting.

**SUMMARY:** The United States Commission on National Security/21st Century will meet in closed session on June 26–27, 2000. The Commission was originally chartered by the Secretary of Defense on 1 July 1998 (charter revised on 18 August 1999) to conduct a comprehensive review of the early twenty-first century global security environment; develop appropriate national security objectives and a strategy to attain these objectives; and recommend concomitant changes to the national security apparatus as necessary. This meeting is being announced less than fifteen days before the meeting dates due to scheduling difficulties.

The Commission will meet in closed session on June 26–27, 2000, to receive updates on Phase Three research and analysis and to provide overall guidance on the structure and content of the Phase Three report. Also, the Commissioners will receive a briefing on Consequence Management. By Charter, the Phase Three report is to be delivered to the Secretary of Defense no later than February 16, 2001.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 552b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

**DATES:** Monday and Tuesday, June 26 and 27, 2000, 8:30 a.m.–5:00 p.m.

**ADDRESSES:** The Airlie Center, 6809 Airlie Road, Warrenton, VA 20187.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith A. Dunn, National Security Study Group, Suite 532, Crystal Mall 3, 1931 Jefferson Davis Highway, Arlington, VA 22202–3805. Telephone 703–602–4175.

Dated: June 15, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–15560 Filed 6–20–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Proposed Collection, Comment Request

**AGENCY:** Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

**ACTION:** Notice.

**SUMMARY:** In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed

public information collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by August 21, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to U.S. Army Corps of Engineers Water Resource Support Center, Waterborne Commerce Statistics Center, P.O. Box 61280, New Orleans, Louisiana 70161–1280, ATTN: CEWRC–NDC–C (Susan K. Hassett). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

*Title, Associated Form, and OMB Number:* Shipper's Export Declaration (SED) Program, ENG Form 7513

*Needs and Uses:* The data collected are movements of foreign cargo from one foreign country to another foreign country through a U.S. water port. Since goods are neither produced nor consumed in the U.S. they do not count in the balance of trade statistics, but are important from a water transportation standpoint. Vessels moving these goods use federally maintained channels, and these goods should be included in federal water transportation an multi-model transportation analysis.

*Affected Public:* Business or other for-profit.

*Annual Burden Hours:* 29,737.

*Number Per Respondents:* 13,000.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 11 minutes.

*Frequency:* Mandatory.

**SUPPLEMENTARY INFORMATION:** The Corps and Maritime Administration (MARAD) use the data from the program to satisfy the missions of their respective agencies. The Corps is responsible for the operation and maintenance of the nation's waterway system to ensure efficient and safe passage of commercial and recreation vessels. The support and management of economically sound navigation projects are dependent upon reliable navigation data mandated by the River and Harbor Appropriations Act of September 22, 1922 (42 Stat. 1043) as amended and codified in 33 U.S.C. 555.

**John A. Hall,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 00–15646 Filed 6–20–00; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Availability (NOA) of Draft General Re-Evaluation Report/ Environmental Impact Report and Supplemental Environmental Impact Statement (Draft Report) for Proposed Modifications to the Guadalupe River Project, Downtown San Jose, California, and Notice of Public Hearing

**AGENCY:** U.S. Army Corps of Engineers, Sacramento District, DOD.

**ACTION:** Notice of Availability and Notice of Public Hearing.

**SUMMARY:** Pursuant to section 102(s)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers (Corps) and the Santa Clara Valley Water District (SCVWD) have prepared a Draft General Re-Evaluation Report/ Environmental Impact Report and Supplemental Environmental Impact Statement (Draft Report) for proposed modifications to the multiple-purpose Guadalupe River Project located in downtown San Jose, California. This Draft Report is being made available for a 45-day public comment period. A public hearing will be held to receive oral and written comments on the Draft Report. Interested Federal, state, and local agencies, organizations, and persons are invited to the hearing.

**DATES:** Comments on the Draft Report should be submitted on or before August 9, 2000. The public hearing will be held July 26, 2000 from 7:00 to 9:30 p.m.

**ADDRESSES:** Comments on the Draft Report should be submitted to the U.S. Army Corps of Engineers, Sacramento District Planning Division, Attention: Nina Bicknese, 1325 J Street, Sacramento, California 95814–2922. The Public Hearing will be held a the Santa Clara Valley Water District, Headquarters Board Room, 5750 Almaden Expressway, San Jose, California 95118–3686. Printed copies of the Draft Report are available for public inspection and review at the location listed below in Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** To obtain additional information related to this Report, interested persons are invited to contact the following: Nina Bicknese, Biological Sciences Environmental Manager, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, California, 95814–2922, (916) 577–7948. (916) 577–5138 (FAX), nbicknese@spk.usace.army.mil

**SUPPLEMENTARY INFORMATION:**

#### 1. Report Availability

In addition to availability for viewing and downloading on the Internet at the following World Wide Web address: www.spk.usace.army.mil/civ/civ.html, printed copies of the Draft Report are available for public inspection and review at the following locations:

Santa Clara Valley Water District, 5750 Almaden Expressway San Jose, CA, 95118

U.S. Army Corps of Engineers, Sacramento District, 1325 J Street, Sacramento, CA, 95814–2922

Almaden Library, 6455 Camden Ave. San Jose, CA, 95120–2823

Alviso Library, 5050 North First Street, Alviso, CA, 95002

Biblioteca Latino America, 921 South First Street, San Jose, CA, 95110

Cambrian Library, 1780 Hillsdale Avenue, San Jose, CA, 95124

Pearl Avenue Library, 4270 Pearl Avenue, San Jose, CA, 95136

Rosegarden Library, 1580 Naglee Avenue, San Jose, CA, 95126

Willow Glen Library, 1157 Minnesota Avenue, San Jose, CA, 95125

Dr. Martin Luther King Jr. Main Library, 180 West San Carlos Street, San Jose, CA, 95113

#### 2. Report Background and Scope

This Report is supplemental to the 1985 Final Guadalupe River Interim Feasibility Report and Environmental Impact Statement (U.S. Army Corps of Engineers, 1985). It addresses proposed modifications to the Guadalupe River Project authorized by Congress under section 401(b) of the Water Resources Development Act of 1986 (Public Law 99–662) and amended by the Energy and Water Development Appropriations Act For Fiscal Year 1990 (Public Law 101–101). These modifications include flood protection, recreation, and

mitigation measures primarily along 2.6 miles of the Guadalupe River in downtown San Jose and two related offsite mitigation areas. This Report will support decision making by the U.S. Army Corps of Engineers, Santa Clara Valley Water District, and other responsible agencies to implement the proposed modifications and to ensure compliance with NEPA, the California Environmental Quality Act (CEQA), and other pertinent laws and regulations. Potential direct and indirect environmental, social economic effects of the Proposed Action and other alternatives are evaluated, and project modifications are recommended for implementation.

The Draft Report analyses consider an array of alternative plans developed to modify the authorized project. These alternatives were developed in a manner that would avoid and minimize adverse environmental impacts to the maximum extent practicable, while meeting the primary planning objectives to (1) provide 100-year flood protection for the downtown San Jose area; (2) protect species listed under the Endangered Species Act; (3) meet conditions for State water quality certification under the Clean Water Act; and (4) further improve recreation opportunities along the river corridor. Numerous alternatives have been considered including revised channel widening, upstream detention, retention of the original authorized project design with additional mitigation, several channel bypass alternative, and no action. The Proposed Action fulfills all stated objectives and includes construction of some remaining components of the original authorized project, proposed modifications to include an underground bypass to convey flood-waters around existing riparian habitat, expanded onsite and offsite mitigation measures to accomplish habitat mitigation goals, and refined operation and maintenance requirements. The anticipated cumulative effects also have been considered and addressed.

**3. Project Area**

The project area for resources evaluated in the Report includes two areas along the Guadalupe River and one area Guadalupe Creek in Santa Clara County, California. The flood protection project is along the 2.6 mile reach of the Guadalupe River in downtown San Jose between Grant Street (just upstream from I–280) and I–880. The mitigation will be located (1) in an area along the Guadalupe River just downstream from I–880 and adjacent to the San Jose Airport, identified as the Reach A mitigation site, and (2) the Guadalupe Creek mitigation site, an area along Guadalupe Creek, from 660 feet downstream from Masson Dam to the Almaden Expressway. Guadalupe Creek is approximately 4 miles upstream from the downtown flood protection area. The project area includes the river, its banks, and land adjacent to the bank in each of these three locations.

**4. Proposed Action**

The Proposed Action is the modification and implementation of the remaining components of the Guadalupe River Project. The Proposed Action modification to the Authorized Project accomplish the following objectives:

- Provide 100-year flood protection for the downtown San Jose area.
- Protect species recently listed or proposed for listing under the Endangered Species Act.
- Meet conditions for water quality certification under the Clean Water Act.
- Refine recreational opportunities along the Guadalupe River corridor.
- Implement mitigation commitments specified in the Mitigation and Monitoring Plan (MMP).

Modification to the Guadalupe River Project include (1) construction and operation of an underground bypass between Santa Clara Street and Coleman Avenue to convey floodwaters around important riparian habitat, (2) riverfront recreation trail between Santa Clara Street and Coleman Avenue on the west bank, and between New Julian Street and Coleman Avenue on the east bank, (3) expanded onsite SRA-cover mitigation between Woz Way and I–880 (4) an additional offsite SRA-cover mitigation site between I–880 and Airport Parkway, and (5) an additional offsite SRA-cover mitigation site on Guadalupe Creek between Masson Dam and Almaden Expressway. Remaining components of the Authorized Project which will be implemented as part of the Proposed Action include (1) construction of flood training walls near I–280 to direct upstream flood flows back into the river channel, (2) westbank pedestrian overlook and recreation trail between Park Avenue and San Fernando Street, (3) eastbank recreation trail between Park Avenue and West Santa Clara, (4) westbank recreation trail between New Julian Street and Coleman, (5) removal of two railroad bridges between New Julian and Coleman Avenue.

**5. Commenting**

Comments received in response to this report, including names and addresses of those who comment, will be considered part of the public record on this proposed action. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Corps will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without the name and address.

**John A. Hall,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 00–15647 Filed 6–20–00; 8:45 am]

**BILLING CODE 3710–EZ–M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 21, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere

with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 15, 2000.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

*Office of the Undersecretary*

*Type of Review:* New.

*Title:* Evaluation of the 21st Century Community Learning Centers Program.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; businesses or other for-profit; not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:* Responses: 18,780; Burden Hours: 29,586.

*Abstract:* The program evaluation uses an experimental design for elementary school students applying to 21st Century centers and a comparison design for middle school students participating in 21st Century centers. Over a 2-year period, it will include questionnaires of students, parents, and teachers; a reading test; and school and center records collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–15573 Filed 6–20–00; 8:45 am]

**BILLING CODE 4000–01–U**

## DEPARTMENT OF ENERGY

### Golden Field Office; Request for Sponsorship and Support for the 2002 Solar Decathlon

**AGENCY:** Golden Field Office, Department of Energy.

**ACTION:** Notice of request for sponsorship and support for the 2002 Solar Decathlon.

**SUMMARY:** The U.S. Department of Energy (DOE) is announcing its intention to conduct a 2002 Solar Decathlon and is soliciting letters of interest from potential co-sponsor(s) and supporters for this inaugural event. The Solar Decathlon is an intercollegiate competition to design and construct energy-efficient and aesthetically pleasing 21st-century homes that use solar energy.

The contest focuses on designing a place to live and work that obtains all of its energy from the sun. Each university team will participate in ten contests that measure the students' ability to design and build homes that collect, store, and effectively use this clean energy (*e.g.,* heating, cooling, lighting, communications, transportation). The Solar Decathlon winner will be the team that demonstrates the most effective balance of energy production and consumption in these ten events during the weeklong competition.

This historic event will be held on the National Mall in Washington, DC, during late summer or early fall 2002. For seven days, solar decathletes will transform the Mall from a pedestrian thoroughfare to a bustling community of energy-efficient, completely solar-powered homes. Each solar house will be a visual showcase of architectural expression and engineering excellence designed and built by creative students from some of the country's preeminent colleges and universities. Each team will test its ability to effectively use the collected solar energy to heat, cool, refrigerate, light, communicate, and transport. The Department's goal is to build the event into an energy and housing ''World Fair''.

**DATES:** Letters of interest are requested by August 16, 2000.

**ADDRESSES:** Copies of this announcement can be obtained from the Golden Field Office home page at *http://www.eren.doe.gov/golden/solicitations.html.* Letters of interest, clearly marked ''2002 Solar Decathlon,'' should be submitted in writing to Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to Ruth E. Adams at 303–275–4788; or sent electronically to ruth_adams@nrel.gov.

**FOR FURTHER INFORMATION CONTACT:** Interested parties should contact Ann Worley at 303–275–4700 or ann_worley@nrel.gov.

**SUPPLEMENTARY INFORMATION:** Under this announcement, DOE is declaring its intention to conduct a 2002 Solar Decathlon and is soliciting interested parties to co-sponsor or support this solar competition. DOE's goals for conducting the Solar Decathlon are to promote and celebrate the creativity and talent of students from a full range of academic disciplines and to support public awareness and enthusiasm for energy efficiency and renewable energy. DOE's financial support is expected to be $1 million for planning, managing, conducting, and promoting the event.

DOE is requesting expressions of interest from parties interested in co-sponsoring or supporting the Solar Decathlon. Event sponsor(s) or supporters will help to promote clean energy for the 21st century, while celebrating educational excellence and the possibilities for integrating these technologies into our homes and lives. Sponsor(s) and supporters would include those organizations willing to commit cash or contributions of equipment, supplies, or services to the event.

Sponsor(s) would be those providing substantive funds or resources to the event, whereas supporters would be those making contributions, but not to the level necessary to co-sponsor the event. Specific areas of interest include programming support (*e.g.,* public broadcasting, media coverage, Internet coverage), donations of equipment or supplies for the event or each participating team (*e.g.,* building materials or supplies, appliances, computers, solar equipment), services (*e.g.,* public outreach, infrastructure support), or funding to supplement that being provided by DOE.

Letters of interest should include the following: (1) Level of interest (*i.e.,* sponsor or supporter); (2) nature of the contributions (*i.e.,* cash, donations of equipment, supplies, or services) and the amount of the proposed support; (3) degree of commitment (*i.e.,* fully committed with funds or contributions available, interested, but need additional information before funds or

resources can be committed); (4) brief description of your organization; (5) description of how your investment or involvement in the event compliments your organization's mission; and (6) reasons for supporting the Solar Decathlon.

Letters of interest, clearly marked ''2002 Solar Decathlon,'' are requested by August 16, 2000 and should be submitted in writing to Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to Ruth E. Adams at 303–275–4788; or sent electronically to ruth_adams@nrel.gov.

Issued in Golden, Colorado, on June 12, 2000.

**Jerry L. Zimmer,**

*Procurement Director, Golden Field Office.*

[FR Doc. 00–15682 Filed 6–20–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration; Emergency Activities Conducted at Los Alamos National Laboratory, Los Alamos County, New Mexico in Response to Major Disaster Conditions Associated With the Cerro Grande Fire

**AGENCY:** Department of Energy.

**ACTION:** Notice of emergency action.

**SUMMARY:** The U.S. Department of Energy (DOE) is issuing this notice of emergency activities conducted at Los Alamos National Laboratory (LANL), Los Alamos County, New Mexico, in response to the recent Cerro Grande Fire. DOE's emergency response activities began with certain preventive actions undertaken immediately before the wildfire entered LANL boundaries in early May 2000, and include those actions taken while the fire burned within LANL boundaries, as well as related subsequent actions (as described below) that are ongoing since the fire was contained and extinguished to address the extreme potential for flooding damage.

About 7,500 acres of land administered by DOE at LANL burned during the Cerro Grande Fire, while another 35,500 acres burned along the mountain flanks above LANL and to the north of the site making this New Mexico's most destructive fire in recorded history. With such large areas of burned vegetation, including areas of bare ash along the steep slopes and canyon sides above LANL, there is a very high risk for flooding within the LANL facility and in residential communities downstream all the way to the Rio Grande. About 36 percent of the annual precipitation for the Los Alamos area falls in the form of rain, primarily during intense thunderstorms that occur in July and August each year, but which may occur as early as June and as late as in October. The time period for the DOE's Cerro Grande Fire emergency actions discussed in this Notice, therefore, extends through November 2000.

Flood control measures of temporary, semi-permanent, and permanent natures must be taken immediately to prevent the potential loss of life and property damage from this threat, and also to protect sensitive cultural resources and potential habitat for Federally-listed threatened and endangered species present within floodplain areas. Moreover, there are 74 potential contaminant release sites (PRSs) and two nuclear facilities at LANL that contain hazardous and radioactively contaminated soils and materials that are vulnerable to flooding. The PRSs and nuclear facilities have the potential to release contaminants downstream. Some 10,000 residents live in communities located downstream from LANL; lands of Pueblo de Cochiti lie to the south along the Rio Grande, as does Cochiti Reservoir, which is a popular recreation and fishing site. Until enough vegetation is established to cover the hillsides and canyons to act as a deterrent to soil erosion and flooding, the potential for flooding will exist for the next several years to decades in some locations.

DOE would normally prepare an environmental impact statement analyzing the actions described for public review and comment pursuant to its National Environmental Policy Act (NEPA) implementing regulations (10 CFR part 1021). However, due to the urgent nature of the actions required to address the effects of the Cerro Grande Fire and the potential for severe flooding impacts, DOE prepared this notice regarding emergency actions pursuant to 10 CFR 1021.343. Because the cumulative impacts of these actions are significant, DOE has consulted with the Council on Environmental Quality about alternative arrangements with regard to NEPA compliance for its emergency actions pursuant to the Council NEPA regulation at 40 CFR 1506.11. Consistent with those consultations, DOE will prepare a special environmental analysis of known and potential impacts from wildfire and flood control actions as the ''alternative arrangement'' contemplated by the Council on Environmental Quality regulation. The special environmental analysis is scheduled to be completed in September 2000 and will be available to the public. DOE will continue to employ a variety of mechanisms, as explained below, to facilitate public involvement. DOE will consider public comments received on this Notice of Emergency Action and will also consider public comments received on the special environmental analysis in planning future mitigation actions. This compliance strategy may be modified or altered as conditions warrant.

This notice also serves as the Public Notice and Statement of Findings regarding DOE's intention to take action involving construction and other actions within floodplains and wetlands pursuant to DOE's regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022). As provided in 10 CFR 1022.18, and because there is an immediate need to take emergency flood control and hazard reduction actions, DOE is waiving the public review periods that would otherwise apply before DOE would take such actions in a floodplain or wetland.

**FOR FURTHER INFORMATION AND TO SUBMIT COMMENTS, CONTACT:** For further information on these activities or other information related to this Notice, contact: Elizabeth Withers, NEPA Compliance Officer, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544, phone (505) 667–8690, fax (505) 665–4872.

For information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

For more information regarding activities related to the Cerro Grande Fire and the LANL Emergency Rehabilitation Team, including relevant phone numbers, visit the LANL web site at *www.lanl.gov.*

**SUPPLEMENTARY INFORMATION:** On the evening of May 4, 2000, employees of the Department of the Interior, National Park Service, Bandelier National Monument, ignited a prescription burn within the boundaries of Bandelier National Monument at a location identified as the Cerro Grande. This fire was quickly pushed by winds outside the boundaries of the prescription area and was declared by the National Park Service to be a ''wildfire'' on May 5, 2000. The fire spread rapidly in a generally northeastern/eastern direction

across land administered by the Department of Agriculture, Forest Service, Santa Fe National Forest. Starting late on May 7, through May 8 and 9, while winds were somewhat moderate, shrubs and trees were cut and back fires were ignited in an effort to hold the fire line at New Mexico State Road 501, which is located at the northwestern side of LANL. A very narrow strip of land a few hundred feet wide is present within that back fire area that is administered by DOE as a part of LANL property. The wind speed increased dramatically on May 10, 2000, and spread sparks over a mile in advance of the wildfire fronts and well beyond the established fire lines, igniting forested areas within the heart of LANL and residential areas within the Los Alamos townsite located nearby.

From May 10 until about May 17, the fire burned within LANL and the townsite area before its spread was stopped and it was considered contained. About 7,500 acres of land administered by DOE at LANL burned during the Cerro Grande Fire; another 35,500 acres burned along the mountain flanks above LANL and to the north of the site. Over 200 residential units occupied by over 400 families burned within the Los Alamos townsite. This fire has consumed more forest acreage and resulted in more property loss than any other fire in New Mexico's recorded history. Small spot fires that periodically flare up, as well as subsurface smoldering, continue to be extinguished within LANL's boundaries and nearby.

During the efforts undertaken to contain and extinguish the fire within LANL, various fire lines were created at several locations within the LANL boundaries using hand tools and heavy machinery to establish clearings; fire access roads were bladed or existing roads were improved for use by heavy transport equipment and fire trucks; trees were mechanically felled to protect exposed utility lines and structures; small back fires were set in locations around LANL to protect buildings and utilities; and water drops and fire-retardant slurry drops were made over LANL from low flying helicopters and airplanes.

After the fire was controlled and had been extinguished (except for occasional flare ups and smoldering hot spots), DOE's planning for stormwater runoff damage was initiated through a cooperative effort with the U.S. Forest Service; the U.S. Army Corps of Engineers; the Department of the Interior's National Park Service and Bureau of Indian Affairs, Northern Pueblos Agency; Pueblo of San Ildefonso; Pueblo of Santa Clara; Pueblo of Jemez; Pueblo de Cochiti; the State of New Mexico's Department of Game and Fish and Department of the Environment; the County of Los Alamos; and various other federal, state and local government agencies and entities, including representatives of the University of California (which currently manages and operates LANL under contract to the DOE). This ongoing effort is coordinated and facilitated by the U.S. Forest Service's Burned Area Emergency Rehabilitation (BAER) Team, a multidisciplinary team of individuals experienced in such planning exercises and in the implementation of erosion and flood control measures.

About 36 percent of the annual precipitation for LANL falls in the form of rain, primarily during intense thunderstorms occurring in July and August of each year, though the rainy season may start as early as June and extend through October. With large areas of burned vegetation, including areas of bare ash along the steep slopes and canyon sides above LANL, there is a very high risk for flooding within the LANL facility and to area residential communities downstream all the way to the Rio Grande. There are 74 potential contaminant release sites (PRSs) and two nuclear facilities at LANL that contain hazardous and radioactively contaminated soils and materials that are vulnerable to flooding. These PRSs and nuclear facilities have the potential to release contaminants downstream. Canyon stormwater discharge flow measurements for a six-hour storm event time period at LANL typically are in the range of about 35 to 590 cubic feet per second; post-fire modeling estimates the canyon discharge flows (unmodified) to be in the range of 90 to 2182 cubic feet per second for the same duration storm events. Some canyons are expected to have even greater flow amounts over some areas due to location specific site conditions after the fire.

It is extremely important that erosion and flood control measures be implemented immediately to protect lives and property from damage by soil erosion and flooding, and also to protect sensitive cultural resources and potential habitat for Federally-listed threatened and endangered species present within floodplain areas. Some 10,000 residents live in communities located downstream from LANL; lands of Pueblo de Cochiti lie to the south along the Rio Grande, as does Cochiti Reservoir, which is a popular recreation and fishing site. The planned flood control measures are of temporary, semi-permanent and permanent natures. The potential for flooding will exist for the next several years to decades in some locations until enough vegetation is established to cover the hillsides and canyons to act as a sufficient deterrent to the soil erosion and flooding threat.

The potential for a wildfire occurring at LANL and its subsequent impacts was considered in the LANL Site-wide Environmental Impact Statement (LANL Site-wide EIS) issued by DOE in February 1999. In that analysis, a wildfire scenario was considered that was similar in intensity and nature to the actual Cerro Grande Fire. The identified impacts in that document that correlate with the real fire include the actual path of the fire into the LANL facility and its consumption of about 8,000 acres of forest; the burning over of identified potential contaminant release sites and subsequent airborne contaminant fraction (during and subsequent to the actual fire, however, air monitoring stations did not detect and have not detected any contaminant releases above the normal background levels of naturally occurring elements and common substances associated with burning trees); the loss of protective groundcover and subsequent increase in soil erosion and flooding; the potential for movement downstream of contaminants in silt and soil; adverse effects on wildlife and biological systems; and adverse effects on cultural resources.

Various impact mitigations were identified through the LANL Site-wide EIS analysis, including the need to remove vegetation and combustibles around certain high risk buildings and structures around LANL (this action was completed before the fire occurred); and interagency efforts to reduce vegetation fuel loading within neighboring lands administered by Bandelier National Monument, the Santa Fe National Forest and DOE (the prescribed fire that ignited the Cerro Grande Fire was a part of this LANL-area effort).

In late 1999, DOE notified LANL stakeholders, including local pueblos and tribes, and various identified interested parties of its intent to prepare an Environmental Assessment (EA) for a proposed wildfire hazard reduction and forest health improvement management program at LANL. This draft EA was scheduled to be released to the stakeholders for review during the week of May 8, 2000. This proposed long-term management program would allow DOE to thin forest vegetation to an appropriate level and then maintain it at that level in the long term to accomplish both the reduction of wildfire hazards and to improve the overall health of the forest resources at LANL. This

management program still has merit and changes are therefore now being made to the draft EA to reflect the changed environmental conditions since the Cerro Grande Fire. This EA will not analyze the environmental impacts resulting from actions discussed in this Notice of Emergency Action. The draft EA is now scheduled to be issued for review and comment at the end of June 2000.

**Emergency Actions To Address Cerro Grande Fire Impacts**

The following paragraphs list the activities undertaken by DOE during the Cerro Grande Fire, assessment activities taken immediately thereafter, and actions that have been initiated and which will be completed over about the next five months to address the adverse impacts of the fire and subsequent potential erosion and flooding. These measures have been designed to protect the various natural and cultural resources at LANL, as well as the LANL structures, operations, infrastructure, and employee population, and to protect the citizens and their properties within the communities of White Rock, Pueblo of San Ildefonso, and Pueblo de Cochiti located downstream of LANL, and, finally, to protect the water quality of the Rio Grande and nearby Cochiti Reservoir.

**I. Fire Suppression Response Activities Conducted on DOE-Administered Lands**

Routine operations at LANL were suspended from May 8, 2000 until May 23, 2000, when non-emergency response employees were allowed to return. The restriction to low-flying aircraft over the LANL reserve was rescinded to allow fire fighting measures from the air to be undertaken most advantageously. Non-DOE fire response personnel were permitted access to DOE-administered lands to suppress fire and protect property. DOE-controlled roads were closed to public use for more than two weeks. Fire breaks and fire access roads were bladed at several LANL locations using heavy equipment and by hand-held tools. Tree cutting ahead of the fire was performed around buildings, utility lines and infrastructure locations. Back-burn fires were set ahead of the main fire and around buildings and utilities to help suppress the fire. A temporary water supply station (a ''pumpkin tank'') to supply water for water-tanker helicopters was brought in and used during the fire suppression stage. Frequent helicopter over-flights to deliver water onto the fire during the daytime hours were made. Single nighttime over-flights by airplane to assess fire size using infrared imagery were employed. DOE and New Mexico Environment Department environmental sampling stations were set up to monitor smoke, ash, and contaminants.

**II. Immediate Follow-on Response and Stabilization Activities on DOE-Administered Lands, Including Preliminary Assessment of Environmental Damage From Fire and Potential Erosion and Flooding**

Field surveys were conducted on-foot and by helicopter and airplane as soon as possible after fire suppression to determine the extent of fire damage to LANL facilities and forest resources, post-fire condition of soils and vegetation, potential for stormwater runoff, presence of threatened or endangered species and other wildlife, and cultural resources damages. The following actions were identified as needing to be undertaken to control potential erosion and abate flooding risks. Steps to conduct these activities are already underway, and it is expected that these actions will be completed over the next five months.

*Environmental Monitoring Stations*

Damaged air and surface water monitoring stations are being repaired or replaced. Groundwater monitoring wells are being protected from potential floods. Rain and stream flow gauges are being installed as needed to monitor for flood conditions.

Contaminant monitoring of key watersheds for sediment transport, surface water flow, alluvial water, and ash flow, are being continued and will be expanded as necessary, as will air monitoring and groundwater monitoring stations outside LANL within surrounding community areas.

*Potential Release Sites or PRS (Resource Conservation and Recovery Act regulated sites) and Potential Contamination Issue Areas*

The condition of any known PRS potentially affected by the fire or related flooding actions are being identified and assessed. Actions are on-going to stabilize damaged sites or treat, remove, and dispose of contaminants, if prudent.

Potential contamination issue areas, such as canyon bottoms, are being assessed. Excavation and removal of potentially contaminated soils or sediments may be required.

*Cultural Resources*

The number and extent of damage to cultural resources and historic properties at LANL are being determined and documented. Protection or stabilization of damaged or vulnerable sites is being conducted if required. The LANL burned areas include at least 430 known archeological sites, an unknown amount of traditional cultural properties, several historic homesteader cabins, and several Manhattan Project buildings and structures. The Advisory Council on Historic Preservation, New Mexico State Historic Preservation Officer, the Governors of the Pueblo de Cochiti, Pueblo of Jemez, Pueblo of Santa Clara and Pueblo of San Ildefonso, and the President of the Mescalero Apache Tribe were notified in accordance with the Emergency Situation procedures contained in the implementing regulations of section 106 of the National Historic Preservation Act of 1966 as amended (36 CFR 800.12) and invited to comment on DOE's anticipated erosion and flood control measures and cultural and historic property treatments. No comments were received. An assessment of the detailed effects of the fire on cultural resources will be compiled and provided to these stakeholders. Members of the Advisory Council on Historic Preservation visited LANL on June 14, 2000.

*Threatened and Endangered Species*

A determination of fire and any post-flooding effects on nesting Mexican spotted owls and their habitat is being made through field visits. Similar effects on Southwestern willow flycatcher and bald eagle habitat are also being determined. Emergency consultation with the U.S. Fish and Wildlife Service was initiated by DOE as required under section 7 of the Endangered Species Act and the Department of the Interior and Department of Commerce interagency cooperation regulations (50 CFR 402.05). The consultation was conducted as a cooperative effort with the Department of Agriculture, Santa Fe National Forest; Department of the Interior, Bandelier National Monument, and the Bureau of Indian Affairs, Santa Clara Pueblo Tribal Counsel. DOE determined that emergency actions taken at LANL to suppress the fire and those emergency actions already taken and to be taken as flood control measures may affect, but are not likely to adversely affect, individuals of Federally-listed threatened or endangered species or their potential critical habitat. To date, U.S. Fish and Wildlife Service staff have expressed oral concurrence with that determination, and they are expected to provide written concurrence soon. Staff of the New Mexico Ecological Services Field Office, U.S. Fish and Wildlife Service, visited LANL on June 13, 2000.

*Utilities and Infrastructure*

Routine LANL mission operations are being re-initiated using a phased start-up approach, including replacement of various filters, monitors, alarms, cables, and other facility health and safety features; cleaning of all buildings and structures; and replacement of equipment and furnishings, such as computers and carpets, damaged by fire or smoke.

Damage to buildings and structures are being repaired, including repair to roofs, walls, doors and windows.

DOE-controlled roads are being reopened to public access; hazardous trees along these roads and in other occupied areas at LANL are being cut and removed from the site; hazard signs are being installed in potential flood-prone areas; hiking and running trails and paths are being repaired or closed to public use.

Damaged utility, security, and communication lines, poles, transformers, and other related structures will be repaired or replaced, and new lines and systems or equipment such as emergency generators are being installed where needed to provide a redundancy of service to vulnerable or critical areas.

Damaged road surfaces, guard rails, temporary structures, small storage structures or facility equipment and automobiles/trucks are being repaired or replaced.

New fire-breaks and fire access roads have been bladed and existing breaks and roads are being repaired or restored.

Helicopters and ground fire-fighting equipment are being used at LANL to fight hotspots; and helicopters are being used to deliver supplies into difficult to reach forested hillside areas. Upon total fire suppression and completion of forest rehabilitation activities, the LANL fly-over restriction by low flying aircraft will be reinstated.

The potential for flooding from rain and stormwater runoff is being assessed. Types of actions to be taken to mitigate these potential effects include the redirection or reduction of water flow using comb and contour tree felling; hill-side raking, localized terracing or contour trenching; installation and use of mulching material by hand or machinery (including hydro-mulching measures), silt fences, straw bale and straw wattles, sandbags, log erosion barriers, concrete barriers, earthen berms, pre-fabricated debris catchers, culverts, sediment traps, dams, catchment and overflow basins, and the installation of other temporary or long-term flood and erosion devices and use of other control techniques. These actions that are on-going to prevent life-threatening flooding to downstream communities may involve the use of hand-held tools (such as rakes for hillside terracing) or heavy machinery (such as in the case of creating earthen berms and dams) and may involve large acreages.

*Miscellaneous Hazard Reduction Actions*

Mechanical means, such as hand-held tools and small machinery, are being used to break-up hydrophobic soils and stabilize soils. Steep slope areas have been seeded using hand methods and small airplanes.

Both un-contaminated and contaminated wastes resulting from the fire are being removed and disposed of as appropriate, including removal of asbestos and lead paint as needed.

Some unpaved facility access roads are being re-graded and repaired as needed.

Culverts are being evaluated, cleaned, replaced or enlarged as needed and existing rock gabions (usually formed of wire mesh forms containing rocks or boulders) are being upgraded and repaired, and new ones installed as needed; any potential water flow impediments are being removed as necessary (such as pedestrian foot bridges in some stream-bed locations).

Emergency community alert alarm systems and remote automated weather stations are being installed near roadways or where needed.

Water storage tanks and pipes at LANL are being drained and flushed, including waste treatment lines, as needed.

Stormwater runoff from Pajarito Canyon may be diverted into Water Canyon as determined necessary to protect White Rock residents and LANL facilities. This may involve the cutting of trenches or similar devices into areas that are presently undisturbed.

Planning for the possible temporary relocation of hazardous materials, special nuclear material and related operations within LANL is being conducted and any removal of such materials and operations deemed necessary is being undertaken using appropriate packaging and transportation methods. Receiving facilities will be compatible with the materials and operations removed there or will undergo appropriate modification to enable them to function appropriately.

Planning for the possible relocation of employees out of vulnerable facilities will be conducted; some relocation of employees into temporary quarters, as deemed necessary, is on-ongoing. This may involve the placement of trailers or similar structures within already developed areas where utilities are available, or the leasing of available off-site office facilities, or similar actions.

Damaged, dying, or dead trees near structures, buildings, drainages and roads are being cut and removed along with trees cut during fire suppression efforts. These trees are being felled in place to perform erosion control.

*Other Miscellaneous Recovery Actions*

A permit(s) for the use of DOE-administered land will be issued to private parties and/or local government entities for community recovery efforts and measures, including staging of equipment, building materials, temporary housing units (such as mobile homes and trailers), temporary storage facilities, and similar actions, and the use of some land tracts (such as the DP Road Tract and the White Rock Tract) for up to three years for temporary residences. It is possible that up to 200 temporary housing units would be installed on DOE-managed land, which would be occupied by about 500 persons. The permitted parties could install permanent and temporary utility infrastructure as well as other infrastructure such as roads and sidewalks.

The effects of reseeding and revegetation efforts, as well as other hazard reduction actions, will be monitored annually for at least the next five years. Repair, replacement or repetition of these actions will be undertaken as needed. Assessments and reevaluations of management plans for various natural and cultural resources within LANL will be undertaken and implemented as appropriate.

*Environmental Impacts*

These listed actions have resulted, or will result, in localized and general environmental impacts that range from beneficial to significantly adverse. The following qualitative discussions briefly identify anticipated impacts that are or could be associated with these actions.

Fire suppression response activities undertaken while the fire front raged through LANL property likely resulted in relatively minor impacts that were environmentally beneficial from the standpoint of reducing fire intensity and severity and suppressing the fire. The suspension of routine operations at LANL, and the closing of roads to public use, during the fire significantly reduced the potential for employee and public health risks and enhanced the ability of the Los Alamos townsite and White Rock to be evacuated quickly, thereby aiding in the overall protection

of human life for the residents of the local communities.

During the fire DOE allowed aircraft to fly over LANL lands and allowed fire fighters to enter the facility and engage in fire suppression activities. These actions may have had localized adverse environmental effects including the impacts of water dropping from a height onto exposed soil, vegetation and possibly onto cultural resources; soil disturbance, tree damage, and cultural resource damage may have resulted. Fire retardant slurry was also dropped from aircraft; the slurry is typically a fertilizer compound that actually aids in the establishment of plants during the recovery period after a fire while, like the water drops, it acted as a retardant to fire spread.

The blading of firebreaks and access roads, while being a means for firefighters to stop the spread of the fire, resulted in adverse impacts from the removal of swaths of vegetation. The removal of this vegetation has resulted in additional disturbed acreage vulnerable to erosion and that is unpleasant in appearance. The acreage involved at LANL has not yet been calculated. It is known that about 40 miles of fuel break line was created using heavy machinery and about 15 miles of fuel break line were created by the use of hand tools around the fire fronts, with about 17 miles of line created both by hand means and using heavy machinery being within the LANL boundaries. The width of these lines varied depending on site conditions and suppression needs. Tree cutting in front of the fire line decreased the amount of vegetation and habitat for small animals and birds, while at the same time helping to control the spread of the fire and thereby protecting infrastructure and buildings from loss or damage. Back fires set intentionally to suppress the wildfire had similar impacts.

The installation and use of a temporary water supply station had minimal environmental effects and helped the firefighters to extinguish the fire and protect property. Over-flights for the purpose of using infrared imagery to access the fire progress resulted in minimal effects and aided firefighters in determining the best locations from which to fight the fire and stage equipment. The installation and use of portable air monitors resulted in minimal environmental effects and provided valuable information.

The post-fire actions, both on-going and to be undertaken in the near term, are more likely to result in major adverse impacts, and will be discussed herein in terms of the bounding significant adverse impacts for which an environmental impact statement would normally have been prepared. Lesser impacts (not likely to be of individually significant nature) would be expected for those activities not specifically identified. The actions most likely to result in significant adverse impacts include the actions taken to remove potential release site legacy environmental contaminants (either in the soil and silt, or buried beneath a soil covering) if this removal involves a large spatial area, and especially if it involves the removal of contamination located within a canyon bottom area within the floodplain. (This would likely result in the removal of additional vegetation and create additional potential for soil erosion; however, it would also decrease the potential for movement downstream of contaminants and the increased spreading out of the contaminant materials.)

Other actions involving significant adverse impacts include the installation of flooding control and hazard reduction structures such as several large earthen berms, dams, sediment traps, and catchment and overflow basins. These would be installed using heavy equipment within floodplain areas and would likely involve the permanent removal of vegetation and soil and possibly substrate removal over tens of acres for each structure; and the local drainage pattern and ecology of each site will be altered. In addition, the potential diversion of stormwater from Pajarito Canyon into Water Canyon (or another canyon) would involve either trenching through tens of feet of rock material comprising the mesa that lies between the two canyons or the tunneling through the mesa to form a subsurface passageway for the water. Impacts would include the use of heavy machinery, trucks, and drilling equipment; the removal and disposal of tons of soil and rock material, part of which potentially could be used elsewhere on site for erosion control and the removal of vegetation and destruction of habitat.

The subsequent diversion of water from one canyon system into another would affect the ecology of both canyons, as well as increase the erosion in Water Canyon (or another similar canyon), including possible scouring and vegetation destruction. Contaminants could move downstream, potentially into the Rio Grande, though these would be expected to be small quantities that may not be readily detectable and would not be expected to result in adverse health effects.

This list of DOE actions is not intended to be all-inclusive. As the assessment of fire effects continues and as the summer rainy season develops, various restoration, flood control and hazard reduction measures may be found to be inadequate or in need of replacement or reinforcement. The list of actions may accordingly be expanded or modified to meet additional needs for repair, replacement, modifications or additional activities.

Most of the actions taken by DOE will result in minor environmental effects similar to those actions conducted by neighboring government agencies (including federal agencies, the pueblos, the State of New Mexico, and local county governments) and private land owners in response to the Cerro Grande Fire and to protect the lives of area residents and workers and the real property located along the path of the fire and within downstream areas. The actions being taken on neighboring lands are limited in nature to those with individually and cumulatively insignificant effects due to extreme site topographical constraints and conditions, together with an implementation time deadline of July 1, 2000. Some of DOE's actions will result in individually significant impacts to the human environment. Further more, the sum of DOE's actions, when considered in conjunction with other actions conducted on neighboring lands, will have cumulatively significant impacts. The overall effects of these cumulative impacts will be positive if the risk of flooding is sufficiently lessened to achieve the desired results, and neutral or adverse if the risk of flooding remains unchanged. It is likely that overall water quality will be slightly adversely affected farther away from the burned areas. By the time the water enters the upper end of Cochiti Reservoir the water quality should be sufficiently good so that no adverse effects may be expected. The nearer to the burned areas one comes, the surface water will become of increasingly poorer quality due to fine particle suspension of ash material and silt, and the transport of larger pieces of charcoal and logs. There are no plans to use surface water to furnish individuals or communities with potable water within the area of concern, however, so potable supplies will not be adversely affected. Some use of the Rio Grande for irrigation, however, may result in slightly adverse effects, or, depending upon the concentration of nutrients, the surface water may have slight positive effects on crops. Contaminants that preferentially adhere to charcoal, or to silt, may move down stream into the Rio Grande and through the Cochiti

Reservoir, but due to dilution may not be readily detectable and are not expected to be harmful to the environment or to human health.

If there is flooding, the overall removal of many tons of topsoil over the burn area will be an adverse irreversible effect. The cumulative impact to vegetation, cultural resources, sensitive or threatened and endangered species, wildlife, infrastructure and utilities, recreational use resources, socioeconomic resources, environmental justice issues, and visual resources effects would be significantly adverse if severe flooding were to occur. And the loss of human life due to flooding would be an unacceptable, irreplaceable, and irreversible adverse impact.

*Mitigations*

Mitigation actions that have been and will continue to be employed when undertaking the flood control, hazard reduction and various recovery actions include: use of certified seed mixes to reduce the potential for the introduction of non-native plant species; use of standard dust suppression means, such as water sprays on construction sites; avoidance of cultural resource sites (trained archeologists are on-site during earth moving activities near known cultural resource sites to help avoid any adverse effects); avoidance of potential habitat areas for Federally-listed threatened and endangered species (trained biologists are on-site during earth moving activities near potential sensitive habitat areas to help avoid any adverse effects); avoidance of PRSs during earth moving activities (unless specifically associated with the planned removal, protection or stabilization of these sites); and the use of best management industry practices when engaged in construction actions.

DOE will continue to monitor the effectiveness and the environmental effects of the emergency actions that it is undertaking and will make appropriate modifications during implementation to mitigate adverse effects.

*Compliance Actions*

Pursuant to Council on Environmental Quality regulations implementing NEPA under emergency circumstances (40 CFR 1506.11) and DOE's own NEPA implementing regulations (10 CFR 1021.343), DOE has consulted with the Council regarding alternative NEPA compliance arrangements for emergency actions having significant environmental impacts. Because of the urgent need to take action, without delay, to employ flood control and hazard reduction measures before the annual rainy season begins, DOE, consistent with Council on Environmental Quality consultations, will prepare a special environmental analysis of impacts from the emergency fire suppression and the flood control actions taken by DOE. DOE is scheduled to issue the special environmental analysis in September 2000 to LANL stakeholders, including pueblos and tribes, and make it otherwise publicly available through the Internet and in DOE and LANL reading rooms and local public libraries in the following New Mexico communities, towns and cities: Los Alamos, Santa Fe, Espanola, and Albuquerque. The availability of the document will be published in local area newspapers. All subsequent or other actions undertaken by DOE will be subject to NEPA under the normal compliance process.

This notice also serves as the Public Notice and Statement of Findings regarding DOE's intention to take action involving construction and other actions within floodplains and wetlands pursuant to DOE's regulations for Compliance with Floodplain/Wetlands Environmental Review Requirements (10 CFR part 1022). As provided in 10 CFR 1022.18, and because there is an immediate need to take emergency flood control and hazard reduction actions, DOE is waiving the public review periods that would otherwise apply before DOE would take such actions in a floodplain or wetland.

*Public Involvement*

DOE will continue to participate in public outreach efforts, including those sponsored by DOE and those coordinated by the BAER Team. Two public meetings have been held at which technical specialists discussed issues of concern with the public, and additional meetings are anticipated as the emergency response actions continue. DOE will continue to employ a variety of mechanisms, including Web sites, press releases, information telephone line, and informal consultations with stakeholders, to facilitate public involvement. A Public Advisory Group is being established that will focus specifically on communications issues as they relate to potential runoff and flood mitigation activities.

The BAER Team has provided information to the public and opportunities for public involvement through several mechanisms including, the establishment of a Web site (www.baerteam.org), regular press releases, an information line (505–603–8942), and individual contacts with members of the public. DOE will continue to coordinate its fire recovery and flood control actions with the interagency team and other stakeholders, and will continue to participate in public meetings.

The public is invited to provide comments on this notice to Elizabeth Withers, NEPA Compliance Officer, at U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544, phone (505) 667–8690 or fax (505) 665–4872. Comments would be considered in developing the special environmental analysis on the emergency actions that have been and are being undertaken.

DOE's emergency action plans will be modified, as appropriate, in response to new information and changing conditions. Monitoring results of the effectiveness and the environmental effects of the emergency actions will be made available to the public. DOE will consider any comments, to the extent practicable, in pursuing adaptive mitigation measures. DOE welcomes comments at any time and will address them to the extent practicable.

Requests for a copy of the special environmental analysis, when available, may be directed to Elizabeth Withers (see above). Copies will also be available on the DOE NEPA Web at *http://tis.eh.doe.gov/nepa/*. The analysis will be made available to the public and DOE will consider comments received in pursuing adaptive mitigation measures.

Issued at Washington, DC, June 16, 2000.

**Henry K. Garson,**

*NEPA Compliance Officer, Office of the Assistant Administrator for Defense Programs.*

[FR Doc. 00–15797 Filed 6–19–00; 1:04 pm]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 921–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, July 6, 2000; 6 p.m.–9:30 p.m.

**ADDRESSES:** College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

1. Approval of 2001 Work Plan and Budget
2. Comments on future site use proposals and on the Rock Creek Reserve Plan
3. Update on waste and nuclear materials shipments
4. Other Board business may be conducted as necessary

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda.

The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 am and 4 pm, Monday–Friday, except Federal holidays.

Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on June 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–15681 Filed 6–20–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board

### Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces a meeting of the Secretary of Energy Advisory Board's Panel on Emerging Technologies for the Treatment of Mixed Waste. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**NAME:** Secretary of Energy Advisory Board—Panel on Emerging Technologies for the Treatment of Mixed Waste.

**DATES:** Thursday, June 22, 2000, 8:30 am–3 pm.

**ADDRESSES:** U.S. Department of Energy, Conference Room 1E–245, 1000 Independence Avenue, SW., Washington, DC 20585.

**Note:** Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the meeting.

**FOR FURTHER INFORMATION CONTACT:** Betsy Mullins, Executive Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the Secretary of Energy Advisory Board's Panel on Emerging Technologies for the Treatment of Mixed Waste is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on emerging technologies for the treatment of mixed waste which the Department of Energy should pursue.

The Panel will focus on the evaluation of emerging non-incineration technologies for the treatment of low-level, alpha low-level and transuranic wastes containing polychlorinated biphenyls (PCBs) and other hazardous constituents. Waste categories to be addressed include inorganic homogeneous solids, organic homogeneous solids, and soils.

The Panel will also evaluate public concerns concerning the incineration of mixed wastes and whether the emerging non-incineration technologies could be implemented in a manner that would allow the Department of Energy to comply with all legal requirements, including those contained in the Settlement Agreement and Consent Order signed by the State of Idaho, Department of Energy, and the U.S. Navy in October 1995.

**Tentative Agenda**

The agenda for the June 22 meeting has not been finalized. However, the meeting will include a series of briefings and discussions on the treatment of mixed wastes. Members of the public wishing to comment on issues before the Panel on Emerging Technologies for the Treatment of Mixed Waste will have an opportunity to address the Panel during the afternoon period for public comment. The final agenda will be available at the meeting.

**Public Participation**

In keeping with procedures, members of the public are welcome to observe the business of the Panel on Emerging Technologies for the Treatment of Mixed Waste and submit written comments or comment during the scheduled public comment periods. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties.

You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

**Minutes**

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 am and 4 pm, Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees

may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on June 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–15680 Filed 6–20–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[IC00–580–000, FERC Form–580]**

## Proposed Information Collection and Request for Comments

June 15, 2000.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of proposed information collection and request for comments.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

**DATES:** Consideration will be given to comments submitted on or before August 21, 2000.

**ADDRESSES:** Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael P. Miller, Office of the Chief Information Officer, CI–1, 888 First Street, NE., Washington, DC 20426.

**FOR FURTHER INFORMATION CONTACT:** Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:** The information collected under the requirements for FERC Form 580, ''Interrogatory on Fuel and Energy Purchase Practices,'' Docket No. IN79–6, (OMB No. 1902–0137) is used by the Commission to implement the statutory provisions of section 205(f) of the Federal Power Act (FPA), as added by the Public Utility Regulatory Policies Act (PURPA) (Pub. L. 95–617). These provisions require that ''not less frequently than every 2 years * * * the Commission shall review, with respect to each public utility, practices under automatic adjustment clauses of such utility to ensure efficient use of resources (including economical purchase and use of fuel and electric energy) under such clauses.''

FERC Form 580 is collected on diskette and in hard copy. The Form 580 information is used by Commission staff to: (1) Evaluate fuel costs in individual rate proceedings; (2) review fuel costs passed through automatic fuel adjustment clauses, as determined during periodic compliance audits of utility books and records; (3) initiate Commission action under section 205(f)(3) of the FPA to order a public utility to modify the terms and provisions of any automatic adjustment clause or to cease any practice in connection with the clause; and (4) determine whether wholesale rates are just and reasonable, as required under FPA Section 205(a).

*Action:* The Commission is requesting a three-year extension of the current expiration date. The current Form 580 can be found on the Commission's web site at: *http://www.ferc.fed.us/electric/f580/form580.htm.*

*Burden Statement:* Public reporting burden for this collection is estimated as:

| Number of respondents (1) | Annual number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden (in hours) (1) × (2) × (3) |
|---|---|---|---|
| 129 | [1].5 | 64 | 4.128 |

[1] The FERC Form 580 is collected once every two years.

The reduction in average burden hours per response has been reduced from 93.5 to 64 hours. This is a direct result of a lower percentage of jurisdictional utilities having fuel adjustment clauses and thus having to file the complete Form 580 interrogatory. Only those utilities with fuel adjustment clauses are required to file the full interrogatory. Utilities without fuel adjustment clauses are required to file an abbreviated form. The estimated total cost to respondents is $221,374 (4,128 hours divided by 2,080 hours per year per full time employee multiplied by $111,545 per year per average employee equals $221,374). The average cost per respondent is estimated to be $1,716.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including 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).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–15565 Filed 6–20–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. ER98–3760–005; EC96–19–053; ER96–1663–056]**

## California Independent System Operator Corporation; Notice of Filing

June 15, 2000.

Take notice that on May 26, 2000, the California Independent System Operator Corporation (ISO), tendered for filing an Answer in the above-referenced dockets. The Answer includes ISO Tariff sheets correcting several errors in the Tariff sheets submitted by the ISO as part of

its compliance filing made in the above-referenced dockets on April 20, 2000.

The ISO states that this filing has been served upon all parties on the restricted service list compiled by the Secretary in the above-referenced proceeding.

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 June 26, 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. 00–15567 Filed 6–20–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–380–000]**

## Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

June 15, 2000.

Take notice that on June 7, 2000, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP00–380–000, a request pursuant to sections 157.205 and 157.208 (18 CFR 157.205 and 157.208) of the Commission's Regulations under the Natural Gas Act, and Columbia's authorization in Docket No. CP83–76–000, 22 FERC Paragraph 62,029 (1983) to increase the maximum allowable operating pressure (MAOP) of its existing delivery lateral pipeline designated as K–212 located in Ohio. Columbia states the uprate is necessary in order to provide volumes of natural gas and the pressure requested by Southeastern Natural Gas Company, who will use the gas to serve Shelly Asphalt Plant located in Licking County, Ohio. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by 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 Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed, 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 Natural Gas Act.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–15569 Filed 6–20–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–136–002]**

## El Paso Natural Gas Company; Notice of Filing

June 15, 2000.

Take notice that on June 12, 2000, El Paso Gas Company (El Paso), tendered for filing its report detailing the fuel adjustments made to affected shippers on May 11, 2000 for the period February 1, 2000 through April 30, 2000, in accordance with the provisions of the Commission's order issued April 14, 2000 at Docket No. RP00–136–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before June 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 proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–15568 Filed 6–20–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL00–46–000; et al.]**

## Entergy Power Marketing Corporation, et al., Order Granting Complaint and Rejecting Related Service Agreements, Denying Complaint and Accepting Related Service Agreement, and Providing Clarification of Order No. 888

Issued June 15, 2000.

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

In this order, we address two complaints that involve the exercise of the right of first refusal provisions established in the Order No. 888 [1] *pro forma* tariff.[2] In one complaint (Docket No. EL00–46–000), a customer alleges that the transmission provider violated its open access transmission tariff by attempting to require the customer to exercise its right of first refusal too early. In the other complaint (Docket No. EL00–53–000), a potential customer alleges that the transmission provider permitted its existing customer to exercise its right of first refusal too late. We now recognize that the right of first refusal provisions of the *pro forma* tariff are not sufficiently clear and provide clarification to the parties to these proceedings and of Order No. 888, as discussed below. As a result, we grant the complaint in Docket No. EL00–46–000 and reject the related service agreements and deny the complaint in Docket No. EL00–53–000 and accept for filing the related service agreement, as discussed further below.

[1] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities: Recovery of Standard Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21,540 (1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12,274 (1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998).

[2] We also address two related filings of service agreements that were entered into based on the parties' understanding of when the right of first refusal may be exercised.

**Background**

[Docket Nos. EL00–46–000 and ER00–1829–000]

*Complaint*

Entergy Power Marketing Corporation (EPMC) currently has a one-year firm transmissions service agreement with Southwest Power Pool, Inc. (SPP) to transmit 600 MW. The term of the agreement is January 1, 2000 to December 31, 2000. On January 24, 2000, SPP informed EPMC that SPP had received competing requests for EPMC's transmission capacity and demanding that EPMC exercise its right of first refusal under section 2.2 of the Open Access Transmission Tariff (OATT). EPMC responded with a letter claiming that it had, under section 2.2 of SPP's OATT, until the end of the contract term to exercise its right of first refusal. EPMC maintained that it had until 60 days before the expiration of its contract (referencing section 17.1 of the OATT) to make its request for renewal of service. Upon receiving EPMC's response, SPP accepted the request for the capacity made by another customer, Tenaska Power Services Company (Tenaska).

On February 16, 2000, EPMC filed its complaint asking the Commission to: (1) Declare that SPP had violated its OATT by requiring EPMC to make an early exercise of its right of first refusal; (2) require SPP to hold open EPMC's right of first refusal until at least October 31, 2000; and (3) direct SPP to refrain from making any further requests that EPMC exercise the right of first refusal before October 31, 2000.

Notice of EPMC's complaint against SPP was published in the **Federal Register**, 65 FR 9258 (2000), with comments, protests, or motions to intervene due on or before March 7, 2000.

A timely answer was filed by SPP. SPP states that the complaint presents an issue of first impression to the Commission as to when a customer is required to inform the transmission provider whether it will exercise its right of first refusal. SPP suggests that if the Commission grants EPMC's complaint it will be encouraging transmission capacity hoarding by transmission customers. SPP asks that the Commission dismiss EPMC's complaint.

Timely motions to intervene in support of the complaint were filed by ONEOK Power Marketing Company. Timely motions to intervene in support of SPP's position were filed by Enron Power Marketing, Inc. Duke Energy Corporation, jointly by Tenaska Power Services Company and Coral Power, LLC, and by Reliant Energy Services, Inc. A notice of intervention, raising no issues, was filed by the Arkansas Public Service Commission. Timely motions to intervene, raising no issues, were filed by Arkansas Electric Cooperative Corporation, Conoco Global Power, Duke Energy Trading and Marketing, LLC, Dynegy Power Marketing, Inc., the Municipal Energy Agency of Mississippi and Lafayette Utilities system, the Oklahoma Municipal Power Authority, Southwestern Electric Power Company and Public Service Company of Oklahoma. An untimely motion to intervene was filed by Ameren Services Company.

EPMC filed an answer to SPP's answer to the complaint. Tenaska filed a motion to expedite the complaint proceedings and to reject EPMC's answer to SPP's answer. SPP supports Tenaska's motion for expedition.

*Service Agreements*

On March 7, 2000, in Docket No. ER00–1829–000, SPP filed service agreements under its OATT for service, using the disputed capacity, to Tenaska.

Notice of SPP's filing was published in the **Federal Register**, 65 FR 14,557 (2000), with comments, protests, or motions to intervene due on or before March 28, 2000.

EPMC filed a timely motion to intervene and protest claiming that the service agreements are an attempt to sell capacity that is subject to EPMC's right of first refusal and are thus a violation of SPP's tariff. EPMC asks that this proceeding be consolidated with its complaint.

Tenaska filed a timely motion to intervene in support of SPP's filing.

[Docket Nos. EL00–53–000 and ER00–1711–000]

On August 26, 1999, Texas-New Mexico Power Company (TNMP) submitted to Public Service Company of New Mexico (PSNM) a request for firm point-to-point transmission service under PSNM's OATT for the period from January 1, 2000 to December 31, 2001. After receiving TNMP's request for transmission service, PSNM Transmission informed TNMP that it had no Available Transfer Capability (ATC) to satisfy TNMP's request, but stated that a 28 MW contract with PSNM Marketing was due to expire on December 31, 1999 and, if PSNM Marketing did not exercise its right of first refusal to extend the contract, PSNM Transmission would be able to provide the requested transmission service.[3]

PSNM Transmission notified PSNM Marketing of the competing transmission request and asked PSNM Marketing to confirm or deny that it would extend its transmission agreement. However, PSNM Marketing indicated that it needed additional time to consider whether or not to exercise its right of first refusal to extend the contract and match TNMP's contract term. Consequently, PSNM Transmission held TNMP's request first in the queue subject to PSNM Marketing's right of first refusal.

On December 17, 1999, PSNM Marketing exercised its right of first refusal by matching TNMP's request for 28 MW of transmission service of two years.

*Service Agreement*

On February 28, 2000, PSNM submitted, in Docket No. ER00–1711–000, an executed service agreement between PSNM Transmission and PSNM International under PSNM's OATT. Under the service agreement, PSNM Transmission will continue to provide PSNM Marketing (through an assignment from PSNM International) 28 MW of firm point-to-point transmission service. PSNM requests an effective date of January 1, 2000.

Notice of PSNM's filing was published in the **Federal Register**, 65 FR 12,984 (2000), with comments, protests, or motions to intervene due on or before March 21, 2000.

On March 21, 2000, TNMP filed an intervention, protest, request for investigation and motion for consolidation with its complaint in Docket No. EL00–53–000. TNMP argues that PSNM Marketing (through an assignment from PSNM International) was able to retain the transmission capacity as a result of PSNM Transmission acting in a manner that was unjust, unreasonable, unduly discriminatory and preferential to its affiliate. According to TNMP, the issue raised in its complaint are factually identical to those raised in its protest and the two proceedings should be consolidated.

[3] Pursuant to this Commission's separation of functions requirements, PSNM Transmission performs PSNM's transmission function, while PSNM Marketing performs PSNM's wholesale merchant function. PSNM Transmission and PSNM Marketing are each departments of PSNM. PSNM Marketing has firm transmission rights on PSNM's transmission system through assignment from PSNM International Business Development (PSNM International).

*Complaint*

On March 15, 2000, TNMP filed, in Docket No. EL00–53–000, a complaint against PSNM alleging misconduct in PSNM's treatment of TNMP's application for 28 MW of firm point-to-point transmission service. TNMP argues that PSNM Transmission administered its OATT in a manner that is unjust, unreasonabale and unduly discriminatory and preferential to its corporate affiliate. Specifically, TNMP argues that PSNM Transmission violated section 2.2 of its OATT by allowing its affiliate, PSNM Marketing, an unreasonable amount of time to decide whether to exercise a right of first refusal under its existing transmission contract. TNMP argues that it has suffered economic harm as a result of PSNM Transmission's actions and that PSNM Transmission's corporate affiliate was a direct beneficiary of PSNM Transmission's action. TNMP requests that the Commission require PSNM Transmission to release the transmission capacity to TNMP or, in the alternative, TNMP should be compensated for its lost opportunity.

Section 2.2 provides that an existing firm transmission customer has a transmission reservation priority that ''may be exercised at the end of all firm contract terms of one year or longer.'' According to TNMP, PSNM Marketing and PSNM Transmission interpret this to mean the right of first refusal may be exercised up until 11:59 p.m. on December 31, 1999, the last minute of the last day of the existing contract term. TNMP disputes this interpretation. It asserts that the OATT does not intend for the holder of a right of first refusal to be able to exercise this right, at its discretion, when a competing transmission request has been submitted.

TNMP argues that while it recognizes that the Commission, in Order No. 888–A, rejected requests to establish specific procedures for exercising the right of first refusal, any interpretation of section 2.2 must be just and reasonable. TNMP points to section 17.7 of the OATT for support that a right of first refusal must be exercised in a reasonable time period. According to TNMP, section 17.7 contemplates a 30-day time period in which to exercise rollover rights in the context of a request for extension of the commencement of transmission service under the OATT. TNMP argues that there is no basis to distinguish the circumstances in section 17.7 from those in section 2.2. Because PSNM Marketing did not respond in a timely manner, TNMP argues that the transmission capacity should be released to it.

Notice of TNMP's complaint was published in the **Federal Register**, 65 FR 15,630 (2000), with comments, protests, or motions to intervene due on or before April 14, 2000.

PSNM filed an answer and requests that the Commission dismiss TNMP's complaint because TNMP has failed to demonstrate that it violated its OATT or acted in an unduly discriminatory manner. PSNM maintains that the commission expressly declined to adopt specific procedures for exercising the right of the first refusal under section 2.2 when asked to do so on rehearing of Order No. 888. PSNM states that its actions regarding TNMP's request for transmission service were undertaken in strict compliance with section 2.2 of the OATT. According to PSNM, section 2.2 clearly states that a transmission customer with a right of first refusal may exercise that right at the end of the contract term. PSNM states that PSNM Marketing exercised its right and ultimately agreed to match TNMP's competing bid within the time frame permitted by section 2.2.[4] PSNM states that section 2.2 does not provide for any different treatment in the event of a competing bid by another transmission customer; nor does it enable the transmission provider to force a customer taking service subject to a right of first refusal to make its decision prior to the expiration of its contract. Therefore, PSNM argues that PSNM Transmission has no authority under section 2.2 to compel PSNM Marketing or any other long term firm transmission customer to decide, in advance of the expiration of the contract, whether to exercise a right of first refusal.

PSNM also states that the Commission should reject TNMP's attempt to apply section 17.7, which PSNM points out, applies to the different issue of extensions of time for the commencement of service under the OATT.

TNMP filed an answer to PSNM's answer to the complaint.

**Discussion**

*Procedural Matters*

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[5] the notice of intervention and the timely, unopposed motions to intervene serve to make the entities which filed them parties to the proceedings in which they intervened. Further, we find good cause to grant the untimely motions to intervene filed in these proceedings, given the interests represented, the early stage of these proceedings, and the apparent absence of any undue prejudice or delay.

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 385.213(a)(2) (1999), prohibits the filing of an answer to an answer unless otherwise permitted by the decisional authority. We are not persuaded to allow the proposed answers, and accordingly will reject the answers.

*Reservation Priority Under Section 2.2 of the OATT*

We now recognize that the timing provisions governing the right of first refusal in section 2.2 of the *pro forma* tariff are not sufficiently clear as illustrated by the two complaints before us. Because of these complaints, we believe that clarification is necessary to provide for a more orderly and consistent process. Therefore, we provide the following clarification as to the meaning of sections 2.2 and 17.1 of the *pro forma* tariff and as to when the right of first refusal may be exercised.[6]

Section 2.2, Reservation Priority for Existing Firm Service Customers states:

> Existing firm service customers (wholesale requirements and transmission-only, with a contract term of one-year or more), have the right to continue to take transmission service from the Transmission Provider when the contract expires, rolls over or is renewed. This transmission reservation priority is independent of whether the existing customer continues to purchase capacity and energy from the Transmission Provider or elects to purchase capacity and energy from another supplier. If at the end of the contract term the Transmission Provider's Transmission System cannot accommodate all of the requests for transmission service the existing firm service customer must agree to accept a contract term at least equal to a competing request by any new Eligible Customer and to pay the current just and reasonable rate, as approved by the Commission for such service *This transmission reservation priority* for existing firm service customers is an ongoing right that *may be exercised at the end of all firm contract terms of one year or longer.* (Emphasis added).

Section 17.1, Procedures for Arranging Firm Point-to-Point

[4] Contrary to TNMP's assertion, PSNM states that it is unlikely that a customer with a right of first refusal will exercise its right in the last minute of the last hour of the last day of the contract since the customer with the right will need to plan its business just as the party seeking service will need to do. PSNM's Answer at 14.

[5] 18 CFR 385.214 (1999).

[6] This clarification addresses the requirements of our *pro forma* tariff when customers are exercising the right of first refusal. It does not consider whether and to what extent a particular pre-Order No. 888 agreement imposes other obligations on existing customers who are converting from service under a bilateral agreement to service under the tariff.

Transmission Service states, in relevant part:

*A request for Firm Point-To-Point Transmission Service* for periods of one year or longer must contain a written Application to: [Transmission Provider Name and Address], *at least sixty (60) days in advance of the calendar month in which service is to commence.** * * *. All Firm Point-To-Point Transmission Service requests should be submitted by entering the information listed on the Transmission Provider's OASIS. . . . (Emphasis added).

The intent of section 2.2 is to provide the existing long-term firm customer a priority over competing requests for transmission service upon expiration, rollover or renewal of the existing customer's contact. While section 2.2 provides that the reservation priority may be exercised at the end of the contract term, section 17.1 sets forth the reservation procedures that customers must follow arranging firm point-to-point transmission service. By exercising a right of first refusal an existing transmission customer is, in effect, arranging a new long-term firm point-to-point transmission service. Consistent with the reservation procedures in section 17.1, we clarify that the *pro forma* tariff requires customers to notify the transmission provider that they are exercising their right of first refusal at the time they tender their request for the new service term, which must be no less than 60 days prior to the date the existing contract ends and the new service term commences. This procedure should provide sufficient protection to existing transmission customers (our original rationale for establishing a right of first refusal) as well as provide a reasonable and consistent notice prior for all transmission reservations. Therefore, we clarify the phrase ''may be exercised at the end of all firm contract terms'' in section 2.2 to mean sixty (60) days in advance of the date on which the contract expires, rolls, over or is renewed.

Because the interrelationship between section 2.2 and section 17.1 of the *pro forma* tariff was not clear prior to this order, we find that PSNM's interpretation of it OATT, that a transmission customer had until the end of its contract to execute its reservation priority under section 2.2, was not unreasonable when made. Thus, under these circumstances, we conclude that PSNM's customer (PSNM Marketing) properly exercised its right of first refusal. We, therefore, deny TNMP's complaint (Docket No. EL00–53–000) and accept for filing the service agreement (Docket No. ER00–1711–000) that renews the transmission service contract between PSNM and the existing customer—PSNM Marketing (through an assignment from PSNM International), to be effective on January 1, 2000, as requested.[7]

We will grant EPMC's complaint against SPP (Docket No. EL00–46–000), as discussed below. We find that SPP's OATT does not depart from the *pro forma* tariff and, as a result, EPMC has the right to exercise its right of first refusal until the end of the contract term. However, because the end of the contract term is more than sixty days from the date of this order, we will require EPMC to comply with the interpretation of section 2.2 and section 17.1 announced in this order, *i.e.,* that the existing customer's right to execute its reservation priority at the *end of the contract term,* means that the existing customer, here EPMC, may exercise its right of first refusal no later than 60 days prior to the date the existing contract ends and the new service term commences, which, in this case, would be October 31, 2000. SPP cannot compel EPMC to exercise its right of first refusal and cannot award its capacity to a competing customer prior to that date. We, therefore, will reject the service agreements filed by SPP in Docket No. ER00–1829–000 without prejudice to their being refiled in the event that partial service can be provided or if EPMC does not exercise its right of first refusal for the contested transmission capacity.

With the issuance of this order we are putting the industry on notice that, effective immediately (*i.e.,* for contracts expiring August 31, 2000 and after), no less than sixty (60) days prior to the date of existing contract ends and the new service term commences, the existing long-term customer must make an application for its new service term following the usual *pro forma* tariff procedures and notify the transmission provider that it wishes to exercise its reservation priority (right of first refusal) under section 2.2 of the *pro forma* tariff. To assure that existing long-term transmission customers are aware of this requirement, every transmission provider must update the business practices section on its OASIS to reflect the following clarification: ''Any existing long-term customer that wishes to exercise its reservation priority must make an application for its new service term following the usual *pro forma* tariff procedures and notify the transmission provider, no less than sixty days (60 days) prior to the date an existing long-term contract ends and the new service term commences, that the long-term transmission customer wishes to exercise its reservation priority (right of first refusal) under section 2.2 of the *pro forma* tariff.'' In addition transmission providers should notify present customers of the updated business practices. Finally, we will direct the Secretary to publish a copy of this order in the **Federal Register.** We also want to emphasize that this clarification applies to the *pro forma* tariff and the OATTs of all transmission providers unless and until a transmission provider has filed different procedures for exercising the right of first refusal that are consistent with or superior to the *pro forma* tariff.

[7] Central Hudson Gas & Electric Corporation, 60 FERC ¶61,106, *order on reh'g,* 61 FERC ¶61,089 (1992).

**The Commission Orders**

(A) All answers to answers filed in these proceedings are hereby rejected.

(B) EPMC's complaint is hereby granted, as discussed in the body of this order.

(C) TNMP's complaint is hereby denied, as discussed in the body of this order.

(D) PSNM's service agreement filed in Docket No. ER00–1711–000 is hereby accepted for filing to be effective on January 1, 2000, as discussed in the body of this order.

(E) SPP's service agreements filed in Docket No. ER00–1829–000 are hereby rejected, as discussed in the body of this order.

(F) PSNM is hereby informed of the rate schedule designations in Attachment A.

(G) The Secretary is hereby directed to published a copy of this order in the **Federal Register.**

By the Commission.

**David P. Boergers,**

*Secretary.*

Attachment A

PUBLIC SERVICE COMPANY OF NEW MEXICO RATE SCHEDULE DESIGNATIONS

[Docket No. ER00–1711–000]
[Effective: January 1, 2000]

| Designation | Other party/description |
|---|---|
| (1) Service Agreement No. 130 under First Revised Tariff, Vol. No. 4 (Supersedes Service Agreement No. 104). | PSNM international business development. |
| (2) Supplement No. 1 under Service Agreement No. 130 under First Revised Tariff, Vol. No. 4. | Service specifications. |

PUBLIC SERVICE COMPANY OF NEW MEXICO RATE SCHEDULE DESIGNATIONS—Continued

[Docket No. ER00–1711–000]
[Effective: January 1, 2000]

| Designation | Other party/description |
|---|---|
| (3) Eighth Revised Sheet Nos. 106A–106F (Supersedes Seventh Revised Sheet Nos. 106A–106F). | Index of customers. |
| (4) Nineth Revised Sheet Nos. 106 (Supersedes Eighth Revised Sheet No. 106). | Index of customers. |

[FR Doc. 00–15572 Filed 6–20–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

**[Docket No. ER00–2811–000]**

## ISO New England Inc.; Notice of Filing

June 15, 2000.

Take notice that on June 12, 2000, ISO New England Inc. (the ISO), tendered for filing, pursuant to Section 205 of the Federal Power Act, a request for expedited approval of revisions to the NEPOOL Market Rules in order to implement changes in market mitigation procedures and to facilitate Emergency Energy Transactions.

Copies of said filing have been served upon the Secretary of the NPC, the Participants in the New England Power Pool, non-Participant transmission customers and upon the New England State Governors and Regulatory Commissions.

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 June 26, 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. 00–15566 Filed 6–20–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–83–004]**

## Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 15, 2000.

Take notice that on June 12, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective June 14, 2000:

### Appendix A

Substitute Sixth Revised Sheet No. 1
Substitute Original Sheet No. 10A.01
Substitute Original Sheet No. 10A.02
Substitute Original Sheet No. 10A.03
Substitute First Revised Sheet No. 79
Substitute Original Sheet No. 80
Substitute Original Sheet No. 80A
Substitute Original Sheet No. 80B
Substitute Original Sheet No. 80C
Substitute Original Sheet No. 80G
Substitute Original Sheet No. 80H
First Revised Sheet No. 192
Substitute Original Sheet No. 279
Substitute Original Sheet No. 279C
Substitute Original Sheet No. 279D

**Appendix B**

Substitute Seventh Revised Sheet No. 2
Substitute Eighth Revised Sheet No. 14
Substitute Original Sheet Nos. 80D–80F
Substitute First Revised Sheet No. 126
Substitute First Revised Sheet No. 127
Substitute Third Revised Sheet No. 149
Substitute First Revised Sheet No. 165
Substitute Second Revised Sheet No. 166
Substitute First Revised Sheet No. 166A
Substitute First Revised Sheet No. 176
Substitute Second Revised Sheet No. 177
Substitute Fourth Revised Sheet No. 186
Substitute Second Revised Sheet No. 218
Substitute First Revised Sheet No. 219
Substitute Second Revised Sheet No. 233
Substitute First Revised Sheet No. 278
Substitute Original Sheet Nos. 279A–279B
Substitute Original Sheet Nos. 279E–279J

On November 29, 1999, Texas Gas filed proposed tariff sheets to implement a new summer no-notice (SNS) service. On January 12, 2000, the Commission issued an order accepting and suspending the tariff sheets, subject to refund, and establishing a technical conference. Staff convened a technical conference on March 2, 2000. Comments and reply comments were filed following the technical conference. On May 31, 2000, the Commission issued an ''Order Following Technical Conference'' which, based on the comments filed, accepted the tariff sheets to become effective June 14, 2000, subject to the conditions set forth in the Order, including the requirement for Texas Gas to file revised tariff sheets within ten (10) days expressing its rates for SNS service in a two-part, SFV rate structure, rather than a one-part rate. Texas Gas states that the purpose of the instant filing is to file revised tariff sheets in compliance with the Commission's May 31, 2000, Order, and to move the suspended tariff sheets into effect on June 14, 2000, consistent with that Order.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers, interested state commissions, and the parties appearing on the official service list.

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 Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission 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 in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–15571 Filed 6–20–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–381–000]**

### Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

June 15, 2000.

Take notice that on June 7, 2000, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP00–381–000 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 Quivira Realty, Inc. (Quivira), in Johnson County, Kansas, under Quivira's blanket certificate issued in Docket No. CP82–479–000, 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 202–208–2222 for assistance).

Williams requests authorization to construct and operate delivery point facilities to serve Quivira, which requires the gas for residential air conditioning use. It is stated that Williams will use the facilities to transport up to 12 Dt equivalent of natural gas per day on a firm basis pursuant to section 284.223 of the Commission's regulations. Williams estimates the cost of the facilities at $9,100 and states that it would be reimbursed for the cost by Quivira. It is asserted that Williams has sufficient capacity to render the proposed service without detriment or disadvantage to its other existing customers and that Williams' tariff does not prohibit the addition of delivery point facilities. It is further asserted that the proposal will have no significant impact on Williams' peak day and annual deliveries.

Any questions regarding the application may be directed to David N. Roberts, Manager of Certificates and Tariffs, at (270) 688–6712, Williams Gas Pipelines Central, Inc., P.O. Box 20008, Owensboro, Kentucky 42304.

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. 00–15570 Filed 6–20–00; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–945; FRL–6558–9]**

### Notice of Filing a Pesticide Petition To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–945, must be received on or before July 21, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–945 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number PF–945. 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 in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m.,

Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–945 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–945. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 2, 2000.

**Peter Caulkins,**

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

## Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

### I. Interregional Research Project Number 4

*9E6026*

EPA has received pesticide petition 9E6026 from the Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, Rutgers University, New Brunswick, New Jersey 08903, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of paraquat in or on the raw agricultural commodity (RAC) endive at 0.05 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Zeneca Ag Products, the registrant, 1800 Concord Pike. P.O. Box 15458, Wilmington, DE 19850–5458.

*A. Residue Chemistry*

1. *Plant metabolism*. The qualitative nature of the residues in plants is adequately understood based on studies depicting the metabolism of paraquat in carrots and lettuce following pre-emergence treatments and in potatoes and soybeans following desiccant treatment. The residue of concern in plants is the parent chemical, paraquat.

2. *Analytical method*. An adequate analytical method (spectrometric method) has been accepted and published in the Pesticide Analytical Manual (PAM Vol. II) for the enforcement of tolerances in plant commodities.

*B. Toxicological Profile*

1. *Acute toxicity*. Acute toxicity studies conducted with the 45.6% paraquat dichloride technical concentrate give the following results: oral lethal dose $(LD)_{50}$ in the rat of 344 milligrams/kilograms (mg/kg) males and 283 mg/kg females Category II; dermal $LD_{50}$ in the rat of >2,000 mg/kg for

males and females (Category III); the primary eye irritation study showed corneal involvement with clearing within 17-days (Category II); and dermal irritation of slight erythema and edema at 72 hours (Category IV). Paraquat is not a dermal sensitizer. Acute inhalation studies conducted pursuant to EPA guideline with aerosolized sprays result in lethal concentration $(LC)_{50}$ of 0.6 to 1.4 µg paraquat cation/L (Category I). However, since paraquat dichloride has no measurable vapor pressure; and hydraulic spray droplets are too large to be respirable, inhalation exposure is not a concern in practice.

2. *Genotoxicity*. Paraquat dichloride was not mutagenic in the Ames test using *Salmonella typhinurium* strains TA1535, TA1538, TA98, and TA100; the chromosomal aberrations in the bone marrow test system; or in the dominant lethal mutagenicity study with CD–1 mice. Additionally, paraquat dichloride was negative for unscheduled DNA synthesis in rat hepatocyctes *in vitro* and *in vivo*. Paraquat was weakly positive in the mouse lymphoma cell assay only in the presence of metabolic activation. Paraquat dichloride was weakly positive in mammalian cells (lymphocytes) and positive in the sister chromatid exchange (SCE) assay in chinese hamster lung fibroblasts. Paraquat is non-mutagenic.

3. *Reproductive and developmental toxicity*. A 3-generation reproduction study in rats fed diets containing 0, 25, 75, and 150 ppm (0, 1.25, 3.75, or 7.5 mg of paraquat cation/kg/day, respectively) showed no effect on body weight gain, food consumption and utilization, fertility and length of gestation of the F0, F1, and F2 parents at any dose. The no observed adverse effect level (NOAEL) and lowest observed adverse effect level (LOAEL) for systemic toxicity are 25 ppm (1.25 mg/kg/day) and 75 ppm (3.75 mg/kg/day), respectively, expressed as paraquat cation, based on high mortality due to lung damage. The NOAEL for reproductive toxicity is ≥150 ppm 7.5 mg/kg/day; highest dose tested (HDT) expressed as paraquat cation, as there were no reproductive effects observed.

Two developmental toxicity studies were conducted in rats given gavage doses of 0, 1, 5, or 10 mg/kg/day and 0, 1, 3, or 8 mg/kg/day, respectively, expressed as paraquat cation. In the first study, the NOAEL for maternal toxicity was 1 mg/kg/day based on clinical signs of toxicity and decreased body weight gain at 5 mg/kg/day (the LOAEL). The NOAEL for developmental toxicity was set at 5 mg/kg/day based on delayed ossification of the forelimb and hindlimb digits. In the second study, the maternal and developmental NOAEL is 8 mg/kg/day HDT as there were no effects observed at any dose level. Based on both studies, the overall NOAEL for maternal and developmental toxicity is at least 3 mg/kg/day.

Two developmental toxicity studies were conducted in mice given gavage doses of 0, 1, 5, or 10 mg/kg/day and 0, 7.5, 15, or 25 mg/kg/day paraquat ion, respectively. In the first study the NOAEL and LOAEL for maternal toxicity are 5 mg/kg/day and 10 mg/kg/day, respectively, based on reductions in body weight gain and death (range-finding study). The NOAEL and LOAEL for developmental toxicity are 5 mg/kg/day and 10 mg/kg/day, respectively based on an increased number of litters and fetuses with partial ossification of the 4th sternebra at 10 mg/kg/day HDT. Both the maternal and developmental NOAELs are at 15 mg/kg/day in the second study. The maternal LOAEL of 25 mg paraquat cation/kg/day is based on death, decreases in body weight and body weight gain, and other clinical signs. The developmental LOAEL of 25 mg/kg/day is based on decreases in mean fetal weights, retarded ossification and other skeletal effects. According to the registrant, Paraquat dichloride is not a developmental toxin and the developmental/maternal NOAEL should be based on the second study and is 15 mg/kg/day.

4. *Subchronic toxicity*. A 90-day feeding study was conducted in dogs fed doses of 0, 7, 20, 60, or 120 ppm with a NOAEL of 20 ppm based on lung effects such as alveolitis and alveolar collapse seen at the LOAEL of 60 ppm. In a 21-day inhalation toxicity study, rats were exposed to respirable aerosols of paraquat at doses of 0, 0.01, 0.1, 0.5, or 1.0 µg/L with a NOAEL of 0.01 µg/L and a LOAEL of 0.10 µg/L based on histopathological changes to the epithelium of the larynx and nasal discharge.

5. *Chronic toxicity*. A 12-month feeding study was conducted in dogs fed dose levels of 0, 15, 30, or 50 ppm, expressed as paraquat cation. These levels corresponded to 0, 0.45, 0.93, or 1.51 mg of paraquat cation/kg/day, respectively, in male dogs or 0, 0.48, 1.00, or 1.58 mg of paraquat cation/kg/day, respectively for female dogs. There was a dose-related increase in the severity and extent of chronic pneumonitis in the mid-dose and high-dose male and female dogs. This effect was also noted in the low-dose male group, but was minimal when compared with the male controls. The systemic NOAEL is 15 ppm (0.45 mg/kg/day for males and 0.48 mg/kg/day for females, expressed as parquet cation). The systemic LOAEL is 30 ppm (0.93 mg/kg/day for males and 1.00 mg/kg/day for females, expressed as paraquat cation).

In a 2-year chronic feeding/carcinogenicity study, rats were fed doses of paraquat dichloride at 0, 25, 75, or 150 ppm which correspond to 0, 1.25, 3.75, or 7.5 mg of paraquat cation/kg/day. Paraquat enhanced the development of ocular lesions in all of the treated groups. The predominant lesions detected opthalmoscopically were lenticular opacities and cataracts. At test week 103, dose-related statistically significant ($P<0.001$) increases in the incidence of ocular lesions were observed only in the mid-dose and high-dose male and female groups. Based on these findings, the NOAEL (approximate) and the LOAEL for systemic toxicity, for both sexes, are 25 ppm (1.25 mg/kg/day) and 75 ppm (3.75 mg/kg/day), respectively.

In another 2-year chronic feeding/carcinogenicity study, rats were dosed at 0, 6, 30, 100, or 300 ppm, expressed as paraquat dichloride (nominal concentrations), equivalent to 0, 0.25, 1.26, 4.15, or 12.25 mg/kg/day, respectively (males) and 0, 0.30, 1.5, 5.12, or 15.29 mg/kg/day respectively (females), expressed as paraquat dichloride. The incidence of ocular changes were low and not caused by paraquat in this study. The systemic NOAEL is 100 ppm of paraquat dichloride (4.15 and 5.12 mg/kg/day, for males and females, respectively); or 3.0 mg/kg/day (males) and 3.7 mg/kg/day (females), expressed as paraquat cation. The systemic LOAEL is 300 ppm of paraquat dichloride (12.25 and 15.29 mg/kg/day, for males and females, respectively); or 9.0 mg/kg/day (males) and 11.2 mg/kg/day (females), expressed as paraquat cation.

A chronic feeding/carcinogenicity study was conducted in rats fed dose levels of 0, 25, 75, or 150 ppm, expressed as paraquat cation (nominal concentrations). These doses corresponded to 0, 1.25, 3.75, or 7.5 mg paraquat cation/kg/day, respectively. There was uncertain evidence of carcinogenicity (squamous cell carcinomas in the head region; ears, nasal cavity, oral cavity and skin) in males at 7.5 mg/kg/day HDT with a systemic NOAEL of 1.25 mg/kg/day. Upon submission of additional data to EPA, the incidence of pulmonary adenomas and carcinomas was well within historical ranges and it was determined that paraquat was not carcinogenic in the lungs and head region of the rat.

In another chronic feeding/carcinogenicity study, rats were fed dose levels of 0, 6, 30, 100, or 300 ppm,

expressed as paraquat dichloride. There were no carcinogenic findings in this study at the HDT. In a 2-year chronic feeding/concinogenicity study, SPF Swiss derived mice were fed paraquat dichloride at dose levels of 0, 12.5, 37.5, or 100/125 ppm, expressed as paraquat cation. These rates correspond to 0, 1.87, 5.62, and 15 mg/kg/day as cation. Because no toxic signs appeared after 35 weeks of dosing, the 100 ppm level was increased to 125 ppm at week 36. There were no carcinogenic effects observed in this study. The systemic NOAEL for both sexes is 12.5 ppm (1.87 mg/kg/day) and the systemic LOAEL is 37.5 ppm (5.6 mg/kg/day), each expressed as paraquat cation based on renal tubular degeneration in males and weight loss and decreased food intake in females.

Paraquat is classified Category E for carcinogenicity (no evidence of carcinogenicity in animal studies).

6. *Animal metabolism*. The qualitative nature of the residue in animals is adequately understood based on the combined studies conducted with ruminants (goats and cows), swine, and poultry. The residue of concern in eggs, milk, and poultry, and livestock tissues is the parent, paraquat.

*C. Aggregate Exposure*

In examining aggregate exposure, FQPA directs EPA to take into account available information concerning exposures from the pesticide residue in food and all other exposures for which there is reliable information. These other sources of exposure include drinking water, and non-occupational exposures, e.g., to pesticides used in and around the home. For estimating acute and chronic risks the Agency considers aggregate exposures from the diet and from drinking water. Exposures from uses in and around the home that may be short term, intermediate, or other durations may also be aggregated as appropriate for specific chemicals.

1. *Dietary exposure*. For purposes of assessing the potential dietary exposure under the proposed tolerance, Zeneca has estimated aggregate exposure based on the tolerance levels of 0.05 ppm, 0.3 ppm, 0.05 ppm, and 0.05 ppm in or on globe artichokes, dry peas, persimmons, endive and from all other established tolerances. Percent crop treated was also incorporated into the assessment to derive an upper bound anticipated residue contribution (ARC). The registrant has concluded that there are no acute endpoints of concern for paraquat, and an acute aggregate assessment is not required. The chronic population adjusted dose (cPAD) for chronic dietary assessments is 0.0045 mg/kg/day, based on a NOAEL of 0.45 mg/kg/day from a 1-year dog study and the addition of a standard uncertainty factor of 100.

i. *Food.*— a. *Chronic dietary assessment*. A chronic dietary exposure analysis was performed using current and reassessed tolerance level residues, contributions from the proposed tolerance for use on globe artichoke, dry peas, persimmons, endive, and current percent crop treated information to estimate the ARC for the general population and 22 subgroups. The tolerance in globe artichoke resulted in an ARC of 0.0000001 mg/kg/day (0.002% of the cPAD) for the general population. The resulting ARC for the general U.S. population from all established uses is 0.000367 mg/kg/day (8.2% of the cPAD). For children ages 1 to 6, the most highly exposed subgroup, the resulting ARC is 0.001077 mg/kg/day (23.9% of the cPAD).

b. *Acute dietary assessment*. The registrant has determined that current data on paraquat shows no acute dietary endpoint of concern. Therefore, an acute dietary risk assessment was not conducted for paraquat.

ii. *Drinking water*. The registration eligibility document (RED) for paraquat has stated the following:

Paraquat is not expected to be a contaminant of groundwater. Paraquat dichloride binds strongly to soil clay particles and it did not leach from the surface in terrestrial field dissipation studies. There were, however, detections of paraquat in drinking water wells from two states cited in the pesticides in groundwater data base (1991). These detections are not considered to be representative of normal paraquat use. Therefore, paraquat is not expected to be a groundwater contaminant or concern based on normal use patterns.

Due to its persistent nature, paraquat could potentially be found in surface water systems associated with soil particles carried by erosion, however, paraquat is immobile in most soils, and at very high application rates (50–1000X), there was no desorption of paraquat from soils. Based on paraquat's normal use patterns and unique environmental fate characteristics, exposures to paraquat in drinking water are not expected to be obtained from surface water sources. Therefore, the only exposures considered in aggregate risk assessment for paraquat is chronic dietary.

2. *Non-dietary exposure*. Paraquat dichloride has no residential or other non-occupational uses that might result in non-occupational, non-dietary exposure for the general population. Paraquat products are restricted use, for use by certified applicators only, which means the general public cannot buy or use paraquat products.

*D. Cumulative Effects*

In assessing the potential risk from cumulative effects of paraquat and other chemical substances, the Agency has considered structural similarities that exist between paraquat and other bipyridylium compounds such as diquat dibromide. Examination of the toxicology data bases of paraquat and diquat dibromide, indicates that the two compounds have clearly different target organs. Based on available data, the registrant does not believe that the toxic effects produced by paraquat would be cumulative with those of diquat dibromide.

*E. Safety Determination*

1. *U.S. population*. Based on the paraquat RED, the only exposure route of concern for paraquat is chronic dietary. Using the conservation assumptions presented earlier, EPA has established a cPAD of 0.0045 mg/kg/day. This was based on the NOAEL for the 1-year dog study of 0.45 mg/kg/day and employed a 100-fold uncertainty factor. Results of this aggregate exposure assessment, which includes EPA's reassessment of tolerances for existing crops and the tolerance for use on globe artichokes, dry peas, persimmons, and endive utilize 8.2% of the cPAD. Generally, exposures below 100% of the cPAD are of no concern because it represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, the registrant has concluded that there is reasonable certainty that no harm will result from aggregate exposures to paraquat residues.

2. *Infants and children*. Zeneca has determined that the established tolerances for paraquat, with amendments and changes as specified in this notice, meet the safety standards under the FQPA amendments to section 408(b)(2)(C) for infants and children. The safety determination for infants and children considers the factors noted above for the general population, but also takes into account the possibility of increased dietary exposure due to specific consumption patterns of infants and children, as well as the possibility of increased susceptibility to the toxic effects of paraquat residues in this population subgroup.

In determining whether or not infants and children are particularly susceptible to toxic effects from paraquat residues, Zeneca considered the completeness of the data base for developmental and

reproductive effects, the nature and severity of the effects observed, and other information.

Based on the current data requirements, paraquat has a complete data base for developmental and reproductive toxicity. In the developmental studies, effects were seen (delayed ossification in the forelimb and hindlimb digits) in the fetuses only at the same or higher dose levels than effects in the mother. In the reproduction study, no effects on reproductive performance were seen. Also because the NOAELs from the developmental and reproduction studies were equal to or greater than the NOAEL used for establishing the cPAD, the registrant concluded that it is unlikely that there is additional risk concern for immature or developing organisms. Finally, there is no epidemiological information suggesting special sensitivity of infants and children to paraquat. Therefore, the registrant found that an additional safety factor for infants and children is not warranted for paraquat.

Zeneca estimates that paraquat residues in the diet of non-nursing infants (less than 1 year) account for 17.6% of the cPAD and 23.9% of the cPAD for children aged 1 to 6 years. Further, residues in drinking water are not expected. Therefore, Zeneca has determined that there is reasonable certainty that dietary exposure to paraquat will not cause harm to infants and children.

*F. International Tolerances*

There is no approved CODEX maximum residue level (MRL) established for residues of paraquat on endive.

**II. Interregional Research Project Number 4**

*0E6090*

EPA has received a pesticide petition 0E6090 from the Interregional Research Project Number 4 (IR–4); Rutgers University, New Brunswick, NJ, 08903-0231 proposing, pursuant to section 408(d) of the Federal Food , Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Fosetyl-Al in or on the raw agricultural commodity (RAC) cranberries at 0.5 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Aventis CropScience the registrant, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC, 27709.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of fosetyl-Al in plants is adequately understood. Adequate data on the nature of the residues in plants, including identification of major metabolites and degradates of fosetyl-Al, are available. Radiolabeled studies on the uptake, translocation and metabolism in plants show that the chemical proceeds through hydrolytic cleavage of the ethyl ester. The major residues are fosetyl-Al, phosphorus acid, and ethanol. The tolerances are established for the parent only, that is fosetyl-Al.

2. *Analytical method*. Adequate methods are available for enforcement purposes. There are two analytical methods acceptable for determining residues of fosetyl-Al in plants: a gas chromatography method is available for enforcement of tolerance in pineapple and is listed as method I in pesticide analytical manual (PAM), Vol. II; a gas chromatography/phosphorus specific flame photometric detector (FPD-P) method (Aventis CropScience method no. 163) for citrus has undergone a successful method tryout on oranges and has been sent to the Food and Drug Adminstration (FDA) for inclusion in PAM as method II.

3. *Magnitude of residues*. Field trials were conducted in EPA regions 1 (MA), 2 (NJ), 5 (WI), and 12 (OR). All field trial sites consisted of 1 untreated control plot and 1 treated plot. Each treated plot received four foliar spray applications of fosetyl-Al at a rate of 4.0 lb active ingredient per acre (ai/A) # 5% each, for a total of approximately 16 lb ai/A. The first application was made at approximately 93 days prior to harvest and subsequent applications were made at approximately 30-day intervals. Samples were collected at 3 or 4 days after the last application in all trials. Fosetyl-Al residues in treated samples ranged from <0.05 ppm to 0.35 ppm. Data from this study support the proposed tolerance of 0.5 ppm.

*B. Toxicological Profile*

1. *Acute toxicity*. A complete battery of acute toxicity studies for fosetyl-Al technical has been conducted. The lethal dose $LD_{50}$ from the acute oral rat is 5.4 g/kg and the $LD_{50}$ from an acute dermal rabbit study is >2 g/kg. The $LC_{50}$ for a rat inhalation study is >1.73 mg/L. The acute oral rat and primary dermal irritation studies indicate category IV toxicity. A guinea pig dermal sensitization study shows fosetyl-Al is not a skin sensitizer. The primary eye irritation study in rabbits shows fosetyl-Al to be an eye irritant with Category I toxicity.

2. *Genotoxicity*. Fosetyl-Al is neither mutagenic nor genotoxic. The genetic toxicity potential of fosetyl-Al was assessed in several assays. Eight mutagenicity tests performed with fosetyl-Al were negative. The tests included two Ames assays with *S. typhimurium*, two phase induction assays using *E. coli*, two micronucleus studies in mice, one DNA repair assay using *E. coli* and one mutation assay in *Saccharomyces cereviseae*.

3. *Reproductive and developmental toxicity*. Fosetyl-Al is not a reproductive toxicant and shows no evidence of estrogenic or androgenic related effects.

i. In a 3-generation reproduction study, fosetyl-Al was administered to rats at dietary levels of 0, 6,000, 12,000, or 24,000 ppm. No adverse effects on reproductive performance or pup survival were observed in any dose group. The lowest observed adverse effect level (LOAEL) was established at 12,000 ppm based on effects on animal weights and urinary tract changes. The no observed adverse effect level (NOAEL) for all effects was 6,000 ppm.

ii. A developmental study in rats dosed via oral gavage at 500, 1,000 or, 4,000 mg/kg/day showed a developmental NOAEL of 1,000 mg/kg. At 4,000 mg/kg, there was maternal toxicity, as evidenced by effects on animal weights, maternal deaths, increased resorptions and delayed fetal ossification.

iii. A rabbit developmental study showed no toxic effects at oral doses up to 500 mg/kg. Effects of fosetyl-Al on fetal development were observed only in the rat at a dose producing severe maternal toxicity. In the absence of maternal toxicity, no adverse effects on fetal development were observed, i.e. at 1,000 mg/kg/day in rats or at 500 mg/kg/day in rabbits.

4. *Subchronic toxicity*. In subchronic studies, no significant toxicity was observed even at doses exceeding the limit of 1,000 mg/kg/day.

i. A 21-day dermal study in rabbits showed mild to moderate skin irritation and a NOAEL of 1.5 g/kg/day.

ii. A 90-day feeding study in rats showed a NOAEL of >5,000 ppm; the LOAEL was 25,000 ppm with extramedullary hematopoiesis in the spleen.

iii. A 90-day dog feeding study showed a NOAEL of 10,000 ppm and a

LOAEL at 50,000 ppm, at which the test animals had a lower serum potassium level than untreated animal.

5. *Chronic toxicity*. Chronic toxicity studies have been conducted in dogs and rats:

i. *Dog*. Fosetyl-Al was fed to dogs for 2-years at concentrations of 0, 10,000, 20,000, and 40,000 ppm. The NOAEL was 10,000 ppm, equivalent to 250 mg/kg/day. The LOAEL was 20,000 ppm based on a slight degenerative effect on the testes. These testicular changes, as well as a few scattered clinical changes, were seen in the high dose dogs. No effects were observed in the urinary tract.

ii. *Rat*. Fosetyl-Al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2-years. Based on these levels, respective doses were 100, 400 and 2,000/1,500 mg/kg/day. After 2-weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm due to the occurrence of red coloration of the urine and a decrease in body weight gain. Although these findings were no longer apparent after week 2, analytical verification of dietary levels revealed that the highest dietary level ranged from approximately 38,000 to 61,000 ppm during the first 32-weeks of the study. No significant differences in body weight or food consumption were noted at 2,000 or 8,000 ppm. No biologically significant differences were observed in ophthalmoscopy, hematology, clinical chemistry, or urinalysis for treated and control animals. Calculi in the urinary bladder were observed for several male and female rats in the high dose group. Non-neoplastic findings consisted of epithelial hyperplasia and inflammation in the urinary bladders of males at 30,000/40,000 ppm. Increased incidences of hydronephrosis, inflammation, and epithelial hyperplasia in the kidney were also observed in males from the high dose group. Females from the same group exhibited increased incidences of epithelial hyperplasia in the urinary bladder and hydronephrosis in the kidney. The NOAEL in the chronic rat study was 8,000 ppm (400 mg/kg/day).

The lowest NOAEL for chronic effects of fosetyl-Al is 10,000 ppm (250 mg/kg/day) based on the dog study. This NOAEL is based on minor changes at 20,000 ppm. In the rat, calculi in the urinary bladder and related histopathological changes in the bladder and kidneys of males and females were observed at 30,000/40,000 ppm.

6. *Carcinogenicity*. Long-term feeding studies were conducted with technical grade fosetyl-Al in mice and rats and with monosodium phosphite, the primary urinary metabolite of fosetyl-Al, in rats. These studies, in addition to a mechanistic study in rats, are described below:

i. *Rat*. Fosetyl-Al was administered via admixture in the diet to CD rats at target levels of 0, 2,000, 8,000, and 30,000/40,000 ppm for approximately 2-years. After 2-weeks at 40,000 ppm, this dietary level was reduced to 30,000 ppm due to the occurrence of red coloration of the urine and a decrease in body weight gain. Although these findings were no longer apparent after Week 2, analytical verification of dietary levels revealed that the highest dietary level ranged from approximately 38,000 to 61,000 ppm during the first 32-weeks of the study. Calculi in the urinary bladder were observed for several male and female rats at 30,000/40,000 ppm. Microscopic examination revealed transitional cell carcinomas and papillomas in the urinary bladders of high dose males. In addition, a statistically significant increase in adrenal pheochromocytomas (benign and malignant combined) was observed in males at 8,000 and 30,000/40,000 ppm. The adrenal slides were independently reread by two consulting pathologists who found no significant dose-related increases in the incidence of pheochromocytomas or hyperplasia. The NOAEL for fosetyl-Al in the chronic rat study was 8,000 ppm. A subsequent mechanistic study in rats conducted with dietary levels of 8,000, 30,000 and 50,000 ppm demonstrated that the massive doses of 30,000 and 50,000 ppm fosetyl-Al alter calcium/phosphorous homeostasis resulting in severe acute renal injury, similar to that observed in the chronic rat study, and the formation of calculi in kidneys, ureters, and bladder. Under conditions of chronic exposure, these effects could lead to the formation of bladder tumors as seen in the chronic rat study. At 8,000 ppm, no evidence of renal injury was observed, a result consistent with the absence of bladder tumors. Thus, the bladder tumors induced by fosetyl-Al were the result of acute renal injury followed by a chronic toxic reaction rather than a true carcinogenic effect.

A carcinogenicity study in rats was conducted with monosodium phosphite administered via dietary mixture at levels of 2,000, 8,000, and 32,000 ppm. No evidence of carcinogenicity was observed in this study.

ii. *Mouse*. A 2-year feeding/carcinogenicity study was conducted in mice fed diets containing fosetyl-Al at 0, 2,500, 10,000, or 20,000/30,000 ppm. The 20,000 ppm dose was increased to 30,000 ppm during week 19 of the study. The NOAEL for all effects was 20,000/30,000 ppm (3,000/4,500 mg/kg/day). There were no carcinogenic effects observed under the conditions of this study.

7. *Animal metabolism*. Rat metabolism studies showed that most of the radiolabel rapidly appeared in exhaled carbon dioxide. There was also some radiolabel excreted in the urine as phosphite, along with a smaller amount as the unchanged parent compound. It appears that fosetyl-Al is essentially completely absorbed after ingestion and extensively hydrolyzed to carbon dioxide which is exhaled. The phosphite is excreted in the urine without further oxidation to phosphate. Aluminum does not appear to be absorbed to a significant extent from the gastrointestinal trac.

8. *Metabolite toxicology*. There are no metabolites of toxicological concern. The tolerances are established for the parent only, that is fosetyl-Al.

9. *Endocrine disruption*. No evidence of estrogenic or androgenic effects were noted in any study with fosetyl-Al. No adverse effects on mating or fertility indices and gestation, live birth, or weaning indices were noted in a 3-generation rat reproduction study at doses well above EPA's limit of 1,000 mg/kg/day. Therefore, Aventis CropScience concludes that fosetyl-Al does not have any effect on the endocrine system.

*C. Aggregate Exposure*

1. *Dietary exposure*. EPA has established the chronic reference dose (RfD) for fosetyl-Al at 2.5 mg/kg/day. This RfD is based on a NOAEL of 250 mg/kg/day from a 2-year feeding study in dogs and the use of a 100 fold safety factor to account for inter-species and intra-species differences. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies. Therefore, an acute RfD was not established and there is no expectation of acute risk. Since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats, no endpoint value was calculated for short-and intermediate-term exposure and risk. The Agency has concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, a cancer exposure and risk assessment is not appropriate.

i. *Food*. For all currently registered uses of fosetyl-Al, chronic food exposure for various subgroups of the U.S. population was estimated by EPA through the use of the dietary exposure evaluation model (DEEM) software. The DEEM analysis evaluated the individual

food consumption as reported by respondents in the U. S. Department of Agricultural (USDA) 1989–1991 nationwide continuing surveys of food intake by individuals. As the risk estimate was low for even the most highly exposed subpopulation, no anticipated residues were used. In the surveys, 100% crop treated and tolerance level residues were assumed for all crops. The calculated potential exposure for the U.S. population is 0.077 mg/kg/day resulting in utilization of 3% of the chronic population adjusted dose (cPAD). Potential exposure for the most highly exposed group, children (1–6 years), is 0.157 mg/kg/day and corresponds to 6% of the chronic cPAD. Aventis CropScience anticipates that the incremental exposure resulting from the proposed use on cranberries will be minimal and that dietary exposure for the proposed tolerance in addition to all existing tolerances for fosetyl-Al will be well below the Agency's level of concern.

ii. *Drinking water*. There is no established maximum contaminant level (MCL) or health advisory level for fosetyl-Al. The potential for ground water and/or surface water contamination by fosetyl-Al and its degradates is expected to be very low, in most cases, due to the rapid degradation of the compound in soil to non-toxic degradates under both aerobic and anaerobic conditions. Under aerobic laboratory conditions, the half-life of fosetyl-Al is between 1 and 1.5 hours in loamy sand, silt loam and clay loam and 20 minutes in sandy loam soil. The degradation proceeds through the hydrolysis of the ethyl ester bond, resulting in the formation of phosphorous acid and ethanol. The ethanol is further degraded into carbon dioxide. Based on the short half-life of fosetyl-Al and the known fate of phosphates under anaerobic conditions, EPA determined that an anaerobic soil metabolism study was not necessary. An anaerobic aquatic soil metabolism study was conducted. When anaerobic conditions were established by flooding soil, the half-life was 40 hours with silty clay loam and 14 hours with sandy loam soil. Aventis CropScience expects that potential fosetyl-Al residues in drinking water are not a significant contribution to aggregate exposure.

2. *Non-dietary exposure*. Fosetyl-Al is currently registered for residential use on turf and ornamental plants. Chronic exposure is not expected for residential uses. There is also no expectation of acute risk. No appropriate endpoint attributable to a single dose exposure was identified in oral toxicity studies and consequently, an acute RfD cannot be calculated. No endpoint value is calculable for short-term and intermediate-term exposure and a risk analysis cannot be performed since no dermal or systemic toxicity was seen at the limit dose following repeated dermal applications in the 21-day toxicity study using rats. The Agency has previously concluded that fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, a cancer exposure and risk assessment is not appropriate. Thus, Aventis CropScience concludes that the ornamental and turf uses do not add significantly to the aggregate exposure for fosetyl-Al.

*D. Cumulative Effects*

Effects associated with fosetyl-Al are unlikely to be cumulative with any other compound. The formation of calculi and bladder tumors in rats are the only significant toxicological effects observed with fosetyl-Al. These effects were observed in the rat only at a dose which, not only exceeds estimated human exposure by several orders of magnitude, but is in excess of EPA's dose limit for carcinogenicity studies. Therefore, an aggregate assessment based on common mechanisms of toxicity is not appropriate as exposure to humans will be well below the levels producing calculi and bladder tumors in rats. Further, considering the rapid elimination of fosetyl-Al in the rat metabolism study, any effects associated with fosetyl-Al are unlikely to be cumulative with any other compound. Based on these reasons, only the potential risks of fosetyl-Al are considered in the exposure assessment.

*E. Safety Determination*

1. *U.S. population*. Chronic risk estimates associated with exposure to fosetyl-Al in food and water are expected to be well below the Agency's level of concern. The DEEM chronic exposure analysis previously performed by the Agency for all currently registered food uses showed that the U.S. general population, 3% of the cPAD is occupied by dietary (food) exposure. For the most highly exposed subgroup, children 1–6 years old, 6% of the cPAD is occupied by dietary (food) exposure. The contribution of fosetyl-Al residues in surface and ground water to chronic aggregate exposure is expected to be minimal. The incremental exposure resulting from the proposed use on cranberries is also expected to be negligible. Therefore, Aventis CropScience concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fosetyl-Al residues.

2. *Infants and children*. No indication of increased susceptibility of rat or rabbit fetuses to *in utero* and/or postnatal exposure was noted in the developmental and reproductive toxicity studies. The Agency has previously determined that no additional safety factor to protect infants and children is necessary for this product.

Using the conservative assumptions described in the exposure section above (unit II.C.), aggregate exposure to fosetyl-Al from currently registered food uses will utilize up to 6% of the cPAD for infants and children. The incremental exposure to fosetyl-Al resulting from the proposed use on cranberries is expected to be minimal and even when considered in addition to the potential for exposure to residues in drinking water and from non-dietary, non-occupational exposure, the aggregate exposure to fosetyl-Al is not expected to exceed 100% of the cPAD. Aventis CropScience concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fosetyl-Al residues.

*F. International Tolerances*

There are presently no Codex alimentarius commission maximum residue levels established for residues of fosetyl-Al.

**III. Interregional Research Project Number 4**

*8E5012*

EPA has received a pesticide petition 8E5012 from the Interregional Research Project Number 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231 Rutgers University, New Brunswick, NJ 08903 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of cyprodinil in or on the raw agricultural commodities dry bulb onion, green onion, and strawberries at 0.6, 4.0, and 5.0 parts per million (ppm).

*A. Residue Chemistry*

1. *Plant metabolism*. Novartis believes the metabolism of cyprodinil has been well characterized in plants. The metabolism profile supports the use of an analytical enforcement method that accounts for only parent cyprodinil.

2. *Analytical method*. Analytical method AG–631A is a practical analytical method involving extraction, filtration, and solid phase cleanup of samples with analysis by high performance liquid chromotography

(HPLC) and ultra-violet ray (UV). The limits of quantitation (LOQ) for various commodities are as follows: fruit, grain, juice-0.02 ppm; forage, fodder, straw-0.05 ppm; and grapes-0.01 ppm.

3. *Magnitude of residues*. This petition is supported by field trials conducted on representative members of the bulb vegetable crop grouping and strawberries. All samples were analyzed by residue method AG–631A to determine the residues of cyprodinil. In bulb vegetables, the maximum residue found on representative commodities were 3.9 ppm and 2.7 ppm, for green onion and bulb onion, respectively. The maximum residue found in strawberries was 3.3 ppm. A tolerance of 5.0 ppm for strawberries has been proposed.

*B. Toxicological Profile*

Cyprodinil appears to pose relatively little human toxicity risk due to low use rate, low risk to groundwater, low dietary risk and low worker exposure. The risk from acute dietary exposure to cyprodinil is considered to be very low. The mammalian toxicity studies that have been conducted to support the tolerances of cyprodinil are listed below.

1. *Acute toxicity*. The following are results from the acute toxicity tests conducted on the technical material:

i. A rat acute oral study for cyprodinil with a $LD_{50}$ of 2,796 milligrams/kilograms(mg/kg).

ii. A rat acute dermal study for cyprodinil with a $LD_{50} > 2,000$ mg/kg.

iii. A rat inhalation study for cyprodinil with a $LC_{50} > 1.2$ mg/liter air.

iv. A primary eye irritation study in rabbits showing cyprodinil as minimally irritating.

v. A primary dermal irritation study in rabbits showing cyprodinil as slightly irritating.

vi. A skin sensitization study in guinea pigs showing cyprodinil as a weak sensitizer.

2. *Genotoxicity*. The following are results from the genotoxicity test:

i. *In vitro gene mutation test*. Ames assay-negative; chinese hamster V79 cell test-negative; rat hepatocyte DNA repair test-negative.

ii. *In vitro chromosome test*. Chinese hamster ovary cell cytogenetic test-negative.

iii. *In vivo mutagenicity test*. Mouse bone marrow test-negative.

3. *Reproductive and developmental toxicity*. Cyprodinil is not a reproductive or developmental hazard, as is demonstrated by the results of the following studies:

i. *Rat oral developmental*. An oral developmental study in the rat with a maternal no observed adverse effect level (NOAEL) of 200 mg/kg based on reductions in body weight gain and food consumption and a fetal NOAEL of 200 mg/kg based on decreased pup weight and delayed skeletal growth at 1,000 mg/kg.

ii. *Rabbit oral developmental study*. An oral developmental study in the rabbit with a maternal NOAEL of 150 mg/kg based on reduction in body weight gain and a fetal NOAEL of 400 mg/kg based on the absence of any fetal effects.

iii. *Rat 2-generation reproduction study*. A 2-generation reproduction study in the rat with a systemic NOAEL of 100 ppm and a fetal NOAEL of 1,000 ppm (100 mg/kg). A slight decrease in pup weight at birth and subsequent body weight gain during the lactation phase was observed only at the maternally toxic dose of 4,000 ppm without any effects on reproduction and fertility.

4. *Subchronic toxicity*. These tests are summarized below:

i. A 28-day dermal study in the rat with a NOAEL of 5 mg/kg based on clinical signs.

ii. A 90-day feeding study in the dog with a NOAEL of 1,500 ppm (37.5 mg/kg) based on reduced food intake and body weight.

iii. A 90-day feeding study in the mouse with a NOAEL of 500 ppm (75 mg/kg) based on liver histologic changes.

iv. A 90-day feeding study in the rat with a NOAEL of 50 ppm (5 mg/kg) based on hematologic and histologic findings.

5. *Chronic toxicity*. The reference dose (RfD) for cyprodinil is 0.0375 mg/kg/day. This value is based on the systemic NOAEL of 3.75 mg/kg/day in the rat chronic feeding study with a 100-fold safety factor to account for interspecies extrapolation and intraspecies variability.

i. A 12-month feeding study in the dog with a NOAEL of 2,500 ppm (62.5 mg/kg) based on liver histologic changes.

ii. An 18-month carcinogenicity feeding study in the mouse with a NOAEL of 2,000 ppm (300 mg/kg). The maximum tolerated dose (MTD) was 5,000 ppm based on reduction in body weight gain and no evidence of carcinogenicity was seen.

iii. A 24-month chronic feeding/carcinogenicity study in the rat with a NOAEL of 75 ppm (3.75 mg/kg) based on hematologic and histologic findings. The MTD was 2,000 ppm based on liver histopathology and no evidence of carcinogenicity was seen.

6. *Animal metabolism*. Ruminant metabolism shows extensive degradation following a pathway that is similar to plants. Extrapolating from goat studies, none of the metabolites, including parent compound, will be near the normal minimum range for detection by analytical methods (0.01 to 0.05 ppm). Therefore, parent residues will be proposed as an adequate marker for total residues of cyprodinil in animals. The analysis also demonstrates that livestock tolerances are not required in conjunction with this petition.

7. *Endocrine disruption*. Cyprodinil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that cyprodinil might have any effects on endocrine function related to development and reproduction. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

*C. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. For the purposes of assessing the potential dietary exposure under the proposed tolerances, Novartis has estimated aggregate exposure from the previously established tolerances for the raw agricultural commodities: almond nutmeat at 0.02 (ppm), almond hulls at 0.05 ppm, grapes at 2.0 ppm, raisins at 3.0 ppm, pome fruit crops at 0.1 ppm, wet apple pomace at 0.15 ppm, and stone fruit crops at 2.0 ppm; and the requested tolerances of strawberries at 5.0 ppm, dry bulb onion at 0.6 ppm, and green onion at 4.0 ppm. The tier 1 chronic cyprodinil assessment displayed below used tolerance values listed in 40 CFR 180.532 for all commodities; 100% market share was assumed for all crops. Results of the cyprodinil assessment are displayed below as a percentage of the chronic RfD.

| Population | Chronic RfD |
|---|---|
| U.S. Population ..... | 11.5% |
| All infants (< 1 year) | 24.6% |
| Nursing infants (< 1 year). | 10.7% |
| Non-nursing infants (< 1 year). | 28.6% |
| Children (1–6 years) | 31.1% |
| Children (7–12 years). | 13.5% |

ii. *Drinking water*. The potential for exposure to cyprodinil through drinking water (surface or ground water) is slight due to the minimal level of this chemical anticipated to reach these

bodies of water. This expectation is based on the rapid degradation of cyprodinil and the recommended low use rates that will further restrict the amount of chemical available for leaching or run-off.

2. *Non-dietary exposure.* Novartis believes that the potential for non-occupational exposure to the general public is unlikely except for potential residues in food crops discussed above. The proposed uses for cyprodinil are for agricultural crops and the product is not used residentially in or around the home.

*D. Cumulative Effects*

Consideration of a common mechanism of toxicity is not appropriate at this time since there is no information to indicate that toxic effects produced by cyprodinil would be cumulative with those of any other chemicals. Consequently, only the potential exposure to cyprodinil is considered in this risk assessment.

*E. Safety Determination*

1. *U.S. population.* For the U.S. population (48 contiguous states) chronic exposure was 11% of the RfD. EPA usually has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyprodinil.

2. *Infants and children.* Maximum expected chronic exposure to cyprodinil in the diets of the most sensitive sub-populations, for non-nursing infants (<1–year old) and 31.1% of the RfD for childern (1–6 years old) was calculated to be 28.6% of the RfD.

*F. International Tolerances*

Codex maximum residue levels (MRLs) have not been established for residues.

[FR Doc. 00–15161 Filed 6–20–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–942; FRL–6557–3]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–942, must be received on or before July 21, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–942 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Richard J. Gebken, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6701; e-mail address: gebken.richard@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number PF–942. 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 in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–942 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services

Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: ''*opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–942. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 2000.

**James Jones,**

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

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represent the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**AgrEvo USA Company**

*0F6087*

EPA has received a pesticide petition [0F6087] from Aventis CropScience (fomerly AgrEvo USA Company), Aventis CropScience USA LP, 2, T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of buprofezin in or on the following raw agricultural commodities: almonds, nutmeats at 0.05 part per million (ppm); almonds, hulls, at 0.7 ppm; bananas at 0.1 ppm; the citrus crop group, fruit, at 0.7 ppm; cotton seed at 1.0 ppm; grapes at 0.4 ppm; and tomatoes, fruit at 0.8 ppm; in or on the following processed commodities: citrus oil at 26 ppm; citrus pulp, dried, at 2.5 ppm; cotton gin by-products at 23 ppm; and raisins at 1.0 ppm; and in or on the following meat and milk commodities: the fat, meat and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.05 ppm; and milk at 0.01 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The metabolic profile of buprofezin has been elucidated in a wide range of crops, including tomatoes, lettuce, cotton, and citrus. For convenience, buprofezin metabolites are identified in this document by an internal code, BF 1 through 13. Corresponding structures are available in the tolerance petition. In tomatoes, lettuce, and cotton unchanged buprofezin was the only significant residue. In citrus, although buprofezin was a major component of the residue, a chromatographically well-defined region of radioactivity, clearly associated with polar conjugates, was observed. Mass spectrometry identified the principal polar residue as a hexose conjugate of BF4 (buprofezin hydroxylated in the t-butyl group). Although the conjugate was resistant to enzyme hydrolysis, acid hydrolysis of the polar fraction released predominantly BF26 with minor amounts of BF9 and BF12. The same compounds were observed following acid hydrolysis of a standard of BF4 clearly indicating that BF4 is the conjugated metabolite existing in citrus. Although only limited metabolism was observed in lettuce and cotton, trace levels of BF4/BF26, BF9 and BF12 were observed indicating that the metabolic pathway does not differ with plant species. In the tomato study, which was run prior to the citrus, cotton, and metabolism studies, these trace level metabolites were not specifically looked for due to the high percentage of the residue accounted for by the parent;

they may however have existed in trace amounts.

2. *Analytical method*—i. *Background*. Metabolism studies on lettuce and tomatoes have shown that the only significant residue in these crops is buprofezin. Development of the analytical method took place in parallel with the metabolism studies and the method was designed to quantify two metabolites (BF9 and BF12) in addition to the parent compound. This method was used for analysis of samples from the field trials on all crops except citrus, but for tolerance enforcement only the parent compound is considered.

In the case of citrus, the conjugate of another metabolite (BF4) was significant, and intensive efforts were made to include it in the analytical method. The technical problems proved to be very severe however and the effort was abandoned. As in all other crops, the parent compound is by far the largest component of the residue and this together with the aforementioned metabolites (BF9 and BF12) were the only residues quantified. The only modification made to the method for citrus was to add an amino column cleanup to take out some of the co-extractives unique to citrus.

ii. *Data collection method*. Samples are extracted with acetone. The extracts are filtered and the acetone removed by rotary evaporation. The remaining aqueous extract is acidified with hydrochloric acid and partitioned with hexane. The hexane is applied to a Florisil column and the residues are then eluted from the column with ether/hexane (50/50). The acidic aqueous phase is adjusted to pH 7 and partitioned with ethyl acetate/hexane (50/50). This organic extract is combined with the eluate from the Florisil column, evaporated to dryness, taken up in toluene and analyzed by gas chromatography (GC) with NP detection. The limit of quantitation (LOQ) of this method is 0.01 ppm in the sample.

iii. *Tolerance enforcement method*. The metabolism work and field sample analyses indicated that the only significant residue in treated crops was buprofezin. Accordingly, the method proposed for tolerance enforcement quantifies only buprofezin. The method is identical to the data collection method except that the acid partition step was omitted. The method was validated by an independent laboratory using lettuce, tomato, and cucumber as the test matrices. Since the method used for citrus differs so little from that used for the other crops, no separate ILV was performed for that method.

iv. *Multiresidue methods*. Buprofezin was tested through protocols D and F using tomatoes (a representative non-fatty food) and cottonseed (a representative fatty food). Recoveries were satisfactory such that the multiresidue methods could be used for tolerance enforcement or as confirmatory methods.

v. *Animal methods*. Because of the complexity of the metabolism picture in ruminants, methods were developed to separately quantify buprofezin and three metabolites (BF02, BF12 and BF23) in milk and cattle tissues. The methods were validated to a LOQ of 0.01 ppm in milk and to an LOQ of 0.05 ppm in tissues. These methods were used to analyze the samples from a cattle feeding study. On completion of the study, only buprofezin could be detected in any of the samples and accordingly, the method for determination of buprofezin in milk and tissues is proposed for tolerance enforcement. This method was validated at an external laboratory.

3. *Magnitude of residues*. Field trials were conducted on almonds, bananas, citrus, cotton, grapes, and tomatoes. In all crops buprofezin was the principal residue and in all crops except citrus, it was the only residue. Decline trials conducted in every crop demonstrated that the residue declined with time. In most cases, the residues declined approximately 50% in 3 to 7 days. In addition, processing studies were performed on tomatoes, grapes, citrus, and cotton. Residues concentrated significantly in orange oil, dry orange pulp, wet and dry tomato pomace, and in raisins, Two different formulations were used in the field trials, a 40SC and a 70WP. Bridging trials demonstrated that there was no difference in the residues produced by these two formulations.

i. *Residues in tomatoes*. Field grown tomatoes were treated with sequential applications of APPLAUD 40 SC or APPLAUD 70 WP at the maximum and the minimum application and preharvest intervals. (This is twice the seasonal maximum on the proposed label.) A total of 20 sites were used, distributed throughout the United States.

In the samples collected 7 days after treatment, the residues of buprofezin ranged from 0.02 ppm to 0.64 ppm. There was no apparent difference between tomatoes treated with the 70WP formulation and those treated with the 40SC formulation.

ii. *Residues in processed tomato commodities*. Tomatoes at one trial site in California were treated four times with APPLAUD 40 SC at 2.4 times the proposed maximum rate and at the minimum application and preharvest intervals. After the final application, whole tomatoes were harvested and processed into wet pomace, dry pomace, juice, puree, and paste.

The results indicate that following typical commercial processing of APPLAUD 40 SC-treated tomatoes, buprofezin residues concentrated slightly in the processed commodity, tomato paste, relative to the whole unwashed tomatoes. Buprofezin was detected in paste at 0.68 ppm. This value represents a concentration factor of 1.26x for paste; however this factor does not trigger a separate tolerance for paste. No concentration was observed for buprofezin in the other processed commodity, puree.

iii. *Residues in almonds*. Almonds at 6 sites in California were given a single treatment of APPLAUD 70 WP at the maximum application rate and minimum application and preharvest intervals. No residues above the LOQ (0.05 ppm) were present in any of the nut meat samples. The residues in the hulls ranged from < 0.05 ppm to 0.55 ppm. Only buprofezin was detected.

iv. *Residues in grapes*. Trials were conducted at 15 different sites, which represent 5 major grape producing regions within the United States. APPLAUD was applied twice to grapevines at the maximum application rate and minimum application and preharvest intervals.

Results showed that the residues for parent buprofezin ranged between 0.01 ppm and 0.27 ppm.

v. *Residues in processed grape commodities*. A single trial was conducted in California representing a major grape-producing region within the United States. APPLAUD 70WP was applied twice to grape vines at an exaggerated (5x) rate at the minimum application and preharvest intervals. Samples of treated grapes were harvested after the final application of APPLAUD and were processed into grape juice and raisins.

Buprofezin residues were observed to concentrate (2.41x) in raisins relative to those found in whole grapes. No concentration was observed for any analyte in grape juice.

vi. *Residues in cotton*. Trials were conducted at 15 different sites that represent 5 major cotton producing regions within the United States. APPLAUD 70WP was applied four times to plots of cotton at the maximum application rate, and minimum application and preharvest intervals. (This is twice the seasonal maximum on the proposed label). Duplicate samples of treated cottonseed were harvested

after the final application of APPLAUD and ginned at six sites to produce gin trash.

Five of the six samples of gin trash harvested 14 days after the last application of APPLAUD had residues which ranged between 2.38 ppm and 6.12 ppm. The sixth sample had a residue of 22.52 ppm.

Residues in cottonseed at 14 days after the last application ranged between 0.06 ppm and 0.82 ppm. Residues were observed to decline significantly for the two sites randomly selected to be used to generate decline data.

vii. *Residues in processed cotton commodities*. A single trial was conducted in California representing a major cotton-producing region within the United States. APPLAUD 70WP was applied four times to cotton plants at an exaggerated (5x) rate, and minimum application and preharvest interval.

Samples of treated cotton were harvested after the final application of APPLAUD and were processed into cottonseed, cottonseed by-products (gin trash), meal, hulls, crude oil, refined oil, and soapstock.

Following typical commercial processing of cotton treated with APPLAUD 70WP, at an exaggerated rate, buprofezin residues were observed to be 37.99x higher in gin trash relative to those found in cottonseed. No concentration was observed for buprofezin in any other cottonseed fraction.

viii. *Residues in citrus*. A total of 30 citrus trials were conducted throughout the major citrus producing regions within the United States. The trials consisted of orange, grapefruit, and lemon sites. APPLAUD 70WP was applied twice to the citrus trees at the maximum rate and minimum application and preharvest intervals. Duplicate samples of treated oranges were harvested after the final application of APPLAUD, including samples taken to observe residue decline.

The highest of the citrus residues were found in grapefruit (2.20 ppm) harvested 60 days after the last application of APPLAUD. This result is inconsistent with the rest of the samples in the study and no explanation can be offered for it. The 2.20 ppm result appears to be an outlier and if it is excluded the range of the grapefruit results is < 0.01 to 0.11, which is consistent with the other results in the study. Residues in oranges ranged from below 0.01 ppm to 0.47 ppm. Residues in lemons ranged between 0.01 ppm and 0.51 ppm.

Residues in citrus declined with time after the last application.

ix. *Residues in processed citrus commodities*. A single trial was conducted in California representing a major citrus producing region within the United States. APPLAUD 70WP was applied twice to orange trees at an exaggerated (5x) rate and minimum application and preharvest intervals.

Samples of treated oranges were harvested after the final application of APPLAUD and were processed into orange oil, juice and dry pomace.

Following typical commercial processing of oranges treated with APPLAUD 70WP at 5x the highest recommended application rate, buprofezin residue was detected and observed to concentrate (43.34x) in citrus oil relative to that found in whole fruit. The maximum average detected residue consisting of buprofezin was observed in orange oil at 15.17 ppm. Concentration was also observed for buprofezin at 4.14x in dry pulp relative to that found in the whole fruit. No concentration was observed for any analyte in orange juice.

x. *Residues in bananas*. Trials were conducted at one site in Puerto Rico and four sites on the island of Hawaii. Bananas were treated with four foliar applications of APPLAUD 70WP at the maximum application rate and minimum application and preharvest intervals. One half of the bananas site was protected with plastic bags and the other half was not. Samples were collected from both bagged and unbagged bananas at normal harvest. At one site, samples were also collected to develop data for a decline curve. Residues were determined in both peeled and unpeeled bananas.

Residues of buprofezin ranged from < 0.01 ppm (the LOQ) to 0.077 ppm in the 1-day PHI bananas. Residues were detected only in the unbagged, unpeeled bananas, indicating that these are strictly surface residues. No residues were detected in/on any bagged bananas nor in/on any peeled bananas.

xi. *Residues in milk and meat*. Twelve Holstein dairy cows were randomly assigned to four groups consisting of three cows each. Following quarantine, each cow was orally dosed twice daily for 28 consecutive days with one gelatin capsule containing a known amount of buprofezin. The control (T-0) group received capsules containing no buprofezin. Cattle in the T-I group received 119 mg of buprofezin per cow per day. Cattle in the T-II group received 357 mg per cow per day, and cattle in the T-III group, 1,190 mg per cow per day. These doses are equivalent to consumption of diets containing 0, 5, 15, and 50 ppm buprofezin (0, 1x, 3x, and 10x the maximum theoretical intake).

Milk was sampled on the day prior to the first dosing (day 1), on the day of the first dosing (day 1), and on days 2, 4, 7, 10, 14, 17, 21, 24, and 28. Cream and skim milk samples were prepared from whole milk collected on day 28. All cows were sacrificed on day 29 within 24 hours of the last dose. Sub-samples of muscle (hind-quarter), fat (perinephric), liver, and kidney were taken for analysis.

Milk and tissues were analyzed by methods that separately quantify buprofezin and the metabolites BF02, BF12, and BF23. The methods were validated to an LOQ of 0.01 ppm in milk and 0.05 ppm in tissues.

No buprofezin-derived residues were found in meat or milk commodities in the ruminant feeding study at a feeding level equivalent to the maximum theoretical intake of buprofezin.

*B. Toxicological Profile*

An extensive battery of toxicology studies has been conducted with buprofezin. These studies have been reviewed and summarized by the Joint Meeting of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Expert Group on Pesticide Residues (JMPR, 1991 and 1995). They have also been reviewed by the USEPA as part of the submission for an Experimental Use Permit. Supplemental information on several studies (acute dermal, acute inhalation, chronic dog, rat reproduction, and rat chronic toxicity/oncogenicity study) is being submitted with this petition. These studies indicate that buprofezin has a relatively low degree of toxicity, is neither genotoxic nor oncogenic, and does not cause any significant reproductive or developmental effects. Thus, the use of buprofezin on lettuce and cucurbits (as well as on cotton (Arizona and California) and citrus (California) under the current section 18 emergency exemptions) will not pose a significant risk to human health.

1. *Acute toxicity*. The acute rat oral $LD_{50}$ for buprofezin was 1,635 mg/kg in males and 2,015 mg/kg in females. The acute rat dermal $LD_{50}$ was ≥ 5,000 mg/kg in both sexes. The 4-hour rat inhalation $LC_{50}$ was > 4.57 milligram/liter (mg/L). Buprofezin was slightly irritating to rabbit eyes and skin and did not induce dermal sensitization in guinea pigs.

2. *Genotoxicty*. No evidence of genotoxicity was noted in a battery of *in vitro* and *in vivo* studies. Studies included *Ames Salmonella* and mouse lymphoma gene mutation assays, a

mouse micronucleus assay, an *in vitro* human lymphocyte cytogenetics assay and an *in vitro* rat hepatocyte unscheduled DNA synthesis (UDS) assay.

3. *Reproductive and developmental toxicity*. A developmental toxicity study was conducted in rats at dose levels of 0, 50, 200, or 800 mg/kg/day. The (systemic) maternal no observed adverse effect level (NOAEL) for this study was 200 mg/kg/day based on weight loss, decreased food consumption, clinical signs, increased resorption rate, increased loss of entire litters and one maternal death at 800 mg/kg/day. The developmental (fetal) NOAEL was also 200 mg/kg/day based on reduced fetal body weights and increased incidence of delayed ossification at 800 mg/kg/day. Slightly reduced ossification was also noted at 200 mg/kg/day but this was within historical control range and thus not considered to be significant.

A developmental toxicity study was conducted in rabbits at dose levels of 0, 10, 50, or 250 mg/kg/day. The maternal (systemic) NOAEL was 50 mg/kg/day based on decreased weight gain, decreased food consumption and the complete resorption of 2 litters at 250 mg/kg/day. No evidence of developmental toxicity was noted; therefore, the developmental (fetal) NOAEL was 250 mg/kg/day, the highest dose tested (HDT).

Two rat reproduction studies have been conducted at dietary concentrations of 0, 10, 100, or 1,000 ppm. One was a 2-generation study that included a teratological evaluation. The other was a 1-generation reproduction study conducted to further evaluate some possible changes noted in the first study. Based on the results from both studies, the parental NOAEL was 1,000 ppm HDT. There were no effects on any reproductive parameters but pup weights were decreased at 1,000 ppm. Thus, the reproductive NOAEL was 100 ppm.

4. *Subchronic toxicity*. A 90-day feeding study was conducted in rats at dietary concentrations of 0, 40, 200, 1,000, or 5,000 ppm. Effects noted at 1,000 and/or 5,000 ppm included decreased weight gain, clinical pathology changes, increased liver and thyroid weights, and gross and/or microscopic evidence of liver, thyroid and kidney lesions. Only marginal effects, consisting of slightly reduced feed intake and slightly decreased glucose levels, were noted at 200 ppm. Although the report conservatively concluded the NOAEL to be 40 ppm, the NOAEL was considered by the EPA to be 200 ppm (15 mg/kg/day).

A 90-day study was conducted in which beagle dogs were administered buprofezin via capsule at dose levels of 0, 2, 10, 50, or 300 mg/kg/day. Effects noted at 50, and/or 300 mg/kg/day included various clinical signs of toxicity, substantially decreased weight gain, clinical pathology changes, increased liver, kidney and thyroid weights, and microscopic liver lesions. The NOAEL was 10 mg/kg/day.

5. *Chronic toxicity*. A 2-year study was conducted in which beagle dogs were administered buprofezin via capsule at dose levels of 0, 2, 20, or 200 mg/kg/day. Effects noted at 20 and/or 200 mg/kg/day included decreased weight gain, clinical pathology changes, increased liver and thyroid weights, decreased liver function (measured by BSP clearance) and microscopic liver lesions. Although the report concluded that the NOAEL for this study was 2 mg/kg/day, marginal effects in females at 2 mg/kg/day were considered to be a possible effect by the EPA reviewer pending receipt of additional historical control data. These data are being submitted with this petition and will establish that the dose of 2 mg/kg/day is a NOAEL for this study.

A 2-year rat feeding study was conducted at dietary concentrations of 0, 5, 20, 200, or 2,000 ppm. No evidence of oncogenicity was noted at any dose level. Effects noted at 2,000 ppm included decreased weight gain, increased liver and thyroid weights, and an increased incidence of non-neoplastic liver and thyroid lesions. A possible increase in thyroid lesions was also noted at 200 ppm. According to the EPA reviewer, the NOAEL for this study was 200 ppm (10 mg/kg/day). However, the conclusions of the original report and a subsequent histopathological reevaluation, not yet reviewed by the Agency, indicate that the NOAEL should be considered to be 20 ppm (1 mg/kg/day).

A 2-year mouse feeding study was conducted at dietary concentrations of 0, 20, 200, 2,000, and 5,000 ppm. Effects observed at 2,000 and/or 5,000 ppm included decreased weight gain, minor clinical pathology changes, increased liver weights and an increased incidence of non-neoplastic liver lesions. Increased liver weights were also noted at 200 ppm. Thus, the NOAEL was considered to be 20 ppm (1.8 mg/kg/day). There were slightly increased incidences of liver tumors in females at 5,000 ppm and of lung tumors in males at 200 and 5,000 ppm. The increased incidences of these common tumors were not considered to be treatment-related by either the study director or EPA reviewer but the study was referred to EPA Carcinogenicity Peer Review Group for further valuation.

6. *Animal metabolism*. The metabolism of buprofezin has been extensively studied in various species of animals and fish. Buprofezin has several groups that can metabolize in a variety of ways thus potentially producing a very large number of metabolites. Indeed extensive metabolism to many minor metabolites was observed in all the animal species. Metabolism in fish was, however, much more limited and clearly defined. Although not all metabolic intermediates have been detected in all the species, the major routes of metabolism have been identified in animals and fish and a consistent pattern is observed throughout these species. The proposed metabolic pathway was provided in the tolerance petition. For convenience, degradates are referred to by an internal code: BF 1 through 13. Corresponding chemical structures were provided in the tolerance petition.

i. *Metabolism in rats*. The major metabolite found in rat excreta was parent buprofezin in addition to several compounds formed after extensive metabolism. Whereas plant metabolism appeared restricted mainly to oxidation of the tertiary butyl group, oxidation of the butyl group and hydroxylation of the phenyl ring were both observed in rats. Oxidation of the t-butyl group proceeded beyond an alcohol to an acid and was accompanied by ring opening. The most extensively metabolized compound identified in rats was BF23 (acetylated p-aminophenol)

ii. *Metabolism in ruminants and hens*. Residue levels were low (< 0.05 ppm) in all ruminant and poultry tissues and commodities, following treatment at exaggerated rates (approximately 20x and 7,500x the anticipated dietary burden, respectively). The only exceptions were cow liver (1.21 ppm), cow kidney (0.41 ppm), hen liver (0.15 ppm), and egg yolk (0.11 ppm). Extensive metabolism was observed in both species with a large number of minor metabolites being produced.

The principal metabolites identified in the cow were BF2 and BF23 indicating that the major pathway of degradation in ruminants is hydroxylation of the phenyl ring followed by opening and degradation of the heterocyclic ring. The identification of trace levels of BF13 confirms this pathway. As in rats, BF23 was the most extensively metabolized compound identified. Trace levels of BF12 were also detected. This indicates that the parallel pathway of heterocyclic ring opening without hydroxylation of the

phenyl ring is also in operation. Similarly in hens, the identified metabolites were derived from degradation of the heterocyclic ring either with (BF13) or without (BF9 and BF12) phenyl ring hydroxylation. No single unidentified compound accounted for more than 6% of the total residue in any animal tissue or commodity, with the exception of a component comprising 8.7% of egg white. The total residue in egg white was, however, only 0.02 ppm even at this highly exaggerated dose rate.

iii. *Metabolism in fish*. Analysis of fish tissues, following a bioaccumulation study, found a much simpler metabolic profile. Buprofezin was present in both edible and non-edible tissues, but the principle metabolites were polar conjugates of BF4. Trace levels of BF12 were also detected.

7. *Endocrine disruption*. No special studies have been conducted to investigate the potential of buprofezin to induce estrogenic or other endocrine effects. The standard battery of required toxicity studies has been completed. These studies include an evaluation of the potential effects on reproduction and development and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. The only effect noted on endocrine organs was an increased incidence of follicular cell hypertrophy and C-cell hyperplasia of the thyroid gland in rats administered buprofezin at dietary concentrations of 2,000 ppm for 24 months. Buprofezin also caused mild to moderate hepatotoxic effects at this dietary concentration. AgrEvo believes that the effect on the thyroid most likely resulted from increased turnover of T3/T4 in the liver with a resultant rise in TSH secretion (due to the hepatotoxicity). The rat is known to be much more susceptible than humans to these effects due to the very rapid turnover of thyroxine in the blood in rats (12 hours vs. about 5-9 days in humans). Therefore, the thyroid pathological changes which have been noted following administration of high doses of buprofezin are considered to be of minimal relevance to human risk assessment, particularly considering the low levels of buprofezin to which humans are likely to be exposed.

*C. Aggregate Exposure*

Buprofezin is an insect growth regulator, which is approved for use under a section 18 emergency exemption for control of red scale on citrus in California. Section 18 applications are pending at EPA for the control of whitefly on cotton in Arizona and California, on cucurbits in Arizona, and on tomatoes in Florida. Non-crop uses of buprofezin are limited to an Experimental Use Permit for use on ornamentals in greenhouses, thus only dietary exposures are being considered.

1. *Dietary exposure*—i. *Food*. Potential dietary exposures from food commodities under the proposed food tolerances for buprofezin, including those in the previously submitted tolerance petition number 7F4923, were estimated using the exposure I software system (TAS, Inc.) and the 1977-78 Department of Agriculture (USDA) consumption data. A single, worst-case scenario was evaluated.

In this case, it was assumed that all uses contained residues at the proposed tolerance levels of: Leaf lettuce (13 ppm), head lettuce (5 ppm), the cucurbits crop group (0.5 ppm), almonds, nutmeats (0/05 ppm), bananas (0.8 ppm), citrus (0.6 ppm), grapes (0.3 ppm), raisins (0.8 ppm), tomatoes (0.7 ppm), animal fat, meat and meat by-products (0.05 ppm), and milk (0.01 ppm). This very worst-case scenario also assumed 100% of the crop treated.

ii. *Drinking water*. Exposure to buprofezin from drinking water is expected to be negligible. The potential for buprofezin to leach into ground water was assessed in various laboratory studies as well as terrestrial field dissipation studies conducted in two locations and in varying soil types. The degradation of buprofezin occurs rapidly with half-lives in soil ranging from 22 to 59 days. No evidence of leaching of parent or degradation products was observed in aged leaching or terrestrial field dissipation studies. The major routes of degradation result in mineralization to carbon dioxide and the formation of ''bound'' residues. Buprofezin tends to bind to the top layers of soil with low mobility. The Koc for most soils fell in the range 2,100-4,800. The solubility in water is low (0.382 mg/L).

A screening evaluation of worst-case shallow ground water concentrations was conducted using EPA model SCI/GROW. A number of uses were compared and the results are summarized in the following table:

| Crop | Annual application rate (lbs./acre) | Aerobic half-life (days) | Koc | Relative Intrinsic Leaching Potential | Screening Concentration in Ground water (ppb) |
|---|---|---|---|---|---|
| Almonds | 2 | 41 [a] | 3008[b] | 0.811[c] | 0.036 |
| Citrus | 4 | | | | 0.072 |
| Grapes | 1 | | | | 0.018 |
| Vegetables & cotton | 076 | | | | 0.014 |

[a] Average of laboratory aerobic soil metabolism studies
[b] Average of all tested soils excluding one abnormally highly value (Koc = 18836)
[c] Relative Intrinsic Leaching Potential = (log(t1/2 5))*(4-log(Koc + 5))

The potential exposure of buprofezin in drinking water abstracted from surface water was assessed using a Tier 2, modeling approach. PRZM was used to generate potential runoff loads from a standardized agricultural field (10-ha) to a standardized aquatic system (1-ha 2-m deep pond) following application of buprofezin to citrus (the maximum proposed use rate for all crops). EXAMS was used to estimate the exposure concentration (EEC) in surface water. The ''once-in-10-year'' exceedance probability corresponded to a concentration at 0.52 part per billion (ppb). This value refers to the 56-day average estimated concentration in a farm pond draining agricultural land and must be considered a gross over-estimate of concentrations of buprofezin at the point of drinking water abstraction.

The calculated worst-case maximum exposure of buprofezin in drinking water (assuming consumption of 2 liters per day) will be no more than 1.04 µg per day. Exposure from drinking water abstracted from ground water will be an order of magnitude lower (> 0.14 g per day). However, the contribution of any such residues to the total dietary intake of buprofezin will be negligible.

2. *Non-dietary exposure.* There is a current Experimental Use Permit (EUP) for the use of buprofezin on ornamentals in greenhouses. Exposure to the general population would be minimal in this use and thus was not considered.

*D. Cumulative Effects*

At the present time, there are insufficient data available to allow AgrEvo to properly evaluate the potential for cumulative effects with other pesticides to which an individual may be exposed. For the purposes of this assessment, therefore, AgrEvo has assumed that buprofezin does not have a common mechanism of toxicity with any other registered pesticides. Therefore, only exposure from buprofezin is being addressed at this time.

*E. Safety Determination*

The toxicity and residue data bases for buprofezin are considered to be valid, reliable and essentially complete. The standard margin of safety approach is considered appropriate to assess the risk of adverse effects from exposure to buprofezin for both acute and chronic effects. EPA has adopted a temporary reference dose (RfD) for buprofezin at 0.002 mg/kg/day. This RfD was based on the systemic lowest effect level (LEL) of 2.0 mg/kg/day limit dose tested (LDT) from a 2-year dog study and using a 1,000-fold uncertainty factor (UF). An extra factor of 10 was added to the standard 100 fold safety factor since the RfD was based on a LEL (rather than a NOAEL) and the data base lacked an acceptable reproductive study. Additional data have been submitted to upgrade the reproduction study and to support the lowest dose in the 2-year dog study as a NOAEL. With the upgrading of these studies, the critical study for the establishment of a permanent RfD would be the rat chronic/oncogenicity study. The NOAEL for this study is 1 mg/kg/day. Applying a standard safety factor of 100 for this study, to account for interspecies extrapolation and intraspecies variation, would result in a RfD of 0.01 mg/kg/day. It is this proposed RfD which was used to assess risk to the public.

1. *U.S. population*—i. *Acute risk.* EPA has previously selected, in their approval of the section 18 emergency exemption use, a developmental NOAEL of 200 mg/kg/day from a rat developmental study for the acute dietary endpoint. However, it appears that this is an inappropriate acute endpoint since the clinical effects noted at the higher dose (800 mg/kg/day) occurred only after at least 5 days of dosing and the fetal effects (reduced fetal body weight and delayed ossification) are not likely to be due to an acute (1-day) exposure.

Based on this assessment, AgrEvo has not evaluated the risk from acute exposure to any subgroup of the population. Previously, EPA has assessed the acute risk from use of buprofezin on citrus and cotton to the population subgroup of females 13+ years of age. Using the developmental NOAEL of 200 mg/kg/day, the margin of exposure (MOE), according to EPA calculations, was 5,000 for this subgroup.

ii. *Chronic risk.* Chronic dietary exposures for the U.S. population as a whole utilize 30% of the buprofezin RfD in the worst-case scenario of 100% of crop treated and all residues at the proposed tolerance levels. There is generally no concern for exposures below 100% of the RfD since it represents the level at or below which no appreciable risks to human health is posed. Therefore, there is reasonable certainty that no harm would result to the U.S. population from exposure to buprofezin.

2. *Infants and children.* Data from rat and rabbit developmental toxicity studies and rat multigeneration reproduction studies are generally used to assess the potential for increased sensitivity to infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide.

No indication of increased sensitivity to infants and children was noted in either of the developmental studies. However, in the reproduction studies, the NOAEL for pups (100 ppm) was lower than for adults (1,000 ppm). Based on the intake of buprofezin in pups up to 8 weeks of age, the RfD for children, using a 1,000 fold safety factor, would be 0.01 mg/kg/day. This is the same RfD that is calculated for chronic exposure utilizing the rat chronic/oncogenicity study.

Evaluation of the dietary exposure to infants and children was conducted utilizing the same assumptions as for the U.S. population as a whole. In the worst-case scenario, assuming residues at the proposed tolerance levels and with no adjustment for the percent crop treated, the dietary exposure for children, 1–6 years, was 50% of the RfD. There is generally no concern for exposures below 100% of the RfD since it represents the level at or below which no appreciable risks to human health is posed. Thus, there is a reasonable certainty that no harm will result to the most highly exposed population subgroup, children between 1 and 6 years of age, from exposure to buprofezin.

*F. International Tolerances*

Buprofezin was reviewed by the Joint Meeting of the Food and Agriculture Organization Panel of Experts on Pesticide Residues in Food and the Environment and the World Health Organization Expert Group on Pesticide Residues (JMPR) to establish Codex maximum residue levels (MRLs) in 1991, 1995, and 1997. Permanent MRLs were granted for cucumbers and tomatoes and a temporary MRL was granted for oranges as described below. Additional residue trial data on oranges will be available for the 1999 JMPR meeting to determine if this MRL should also be made permanent.

| Commodity | MRL |
|---|---|
| Cucumber | 0.3 ppm |
| Tomato | 0.5 ppm |
| Oranges, Sweet, Sour | 0.3 ppm (temporary) |

[FR Doc. 00–15382 Filed 6–20–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–947; FRL–6589–5]**

## Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

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

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–947, must be received on or before July 21, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the ''SUPPLEMENTARY INFORMATION.'' To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–947 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Driss Benmhend, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9525; e-mail address: benmhend.drissa@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

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

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

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

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

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

2. *In person.* The Agency has established an official record for this action under docket control number PF–947. 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 in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–947 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: *''opp-docket@epa.gov*,'' or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–947. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under ''FOR FURTHER INFORMATION CONTACT.''

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 31, 2000.

**Janet L. Andersen,**

*Director, Biopesticides Pollution and Prevention Division, Office of Pesticide Programs.*

**Summary of Petition**

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues, or an explanation of why no such method is needed.

EPA has received a pesticide petition 0F6144 from BioTechnologies for Horticulture, Inc., 100 Independence Mall West, Philadelphia, PA 19106–2399, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide 1-methylcyclopropene (1–MCP).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, BioTechnologies for Horticulture, Inc. (BTH) has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by BioTechnologies for Horticulture, Inc. EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

**BioTechnologies for Horticulture, Inc.**

*0F6144*

*A. Product Name and Proposed Use Practices*

1–MCP has a non-toxic mode of action. 1–MCP acts as an inhibitor of the natural plant hormone ethylene by blocking the attachment of ethylene to the ethylene receptor in flowers and post-harvested fruits and vegetables thereby counteracting many of the deleterious effects of ethylene. 1–MCP works by blocking the effects from both internal and external sources of ethylene. 1–MCP does not function by directly harming target organisms.

1–MCP is very effective at counteracting many of the undesirable effects of ethylene on harvested fruits and vegetables, like accelerating ripening and softening of climacteric fruit, accelerated de-greening and softening of non-climacteric fruit, accelerated senescence and loss of green color in fresh cut vegetables, russet spotting of lettuce, abscission of leaves, and physiological disorders in fruits.

1–MCP treatments of post-harvested fruit and vegetables will occur indoors in enclosed areas, and are expected to occur mostly in commercial food storage facilities, a number of which are controlled atmosphere facilities which utilize relatively low levels of oxygen and relatively high levels of carbon dioxide.

*B. Product Identity/Chemistry*

1. *Identity of the pesticide and corresponding residues.* EthylBloc® technology is a powdered end-use product containing 0.14% 1–MCP active ingredient. 1–MCP is released as a gas when EthylBloc® product is added to water. EPA has classified 1–MCP as a plant growth regulator structurally related to naturally occurring plant-containing materials, and eligible for a reduced data set requirement. 1–MCP is regulated by the EPA's Biopesticides and Pollution Prevention Division (BPPD), and EthylBloc® is currently registered to BTH for indoor use on flowers, potted plants, and bedding (EPA Reg. No. 71297–1).

2. *Magnitude of residue at the time of harvest the method used to determine the residue.* Estimates of residues of 1–MCP found in foodstuffs following treatment with EthylBloc® are projected to be extremely low, below reasonable quantifiable concentrations. Low concentrations of 1–MCP passively diffuse in and out of plant tissues and, like naturally occurring ethylene, bind to ethylene receptors. A reasonable worst case estimate of 1–MCP present in plant tissue at any one time can be calculated by assuming that all ethylene receptors in the plant are occupied by 1–MCP. The concentration of ethylene binding sites in plant vegetative tissue range from $1.9 \times 10^{-9}$ to $6.8 \times 10^{-9}$ moles/kilograms (mol/kg) fresh weight for the leaf portion of plants, and $3.2 \times 10^{-11}$ to $7.0 \times 10^{-11}$ mol/kg fresh weight for the edible portion of plants (e.g., apple pulp and tomato fruit). An estimate of 1–MCP residues (molecular weight 54 g/mole) in the leaf and edible portions of plants can be determined as follows:

*Leaf:*

$6.8 \times 10^{-9}$ moles/kg x 54 g/mole x 1.0 (100% sites) = 0.00000037 g/kg (0.37 parts per billion (ppb))

*Edible portion:*

$7.0 \times 10^{-11}$ moles/kg x 54 g/mole x 1.0 (100% sites) = 0.000000004 g/kg (0.004 ppb)

Assuming that 1–MCP occupies all ethylene binding sites in a plant, the quantitative estimates indicate that only 0.37 ppb 1–MCP residues could be retained in the plant tissue, and considerably less than this (0.004 ppb) could be retained in the edible portion of the fruit. In addition, these calculations may have overestimated the actual residue concentrations that consumers would be potentially exposed to, since there would be a finite time between post-harvest treatment of fruits and vegetables and the arrival of the food commodities at the consumer's table. This additional time period would

allow 1–MCP to diffuse off ethylene receptors and out of the plant tissue. Given that the estimates of 1–MCP residues would conservatively range between 0.004 and 0.4 ppb, standard residue methods, which normally have a limit of detection of about 10 ppb, will not have the sensitivity to measure 1–MCP residues. The detection limit for the analysis of 1–MCP in the end-use EthylBloc® formulation is 10 ppb (MRID 444647–02). The predicted residues of 1–MCP in food are low and well below reasonable analytical detection limits.

Further evidence of very low predicted 1–MCP residue levels is obtained from preliminary studies that measured airborne 1–MCP concentrations in food chambers having sizes of approximately one cubic meter or greater. The collective results of these studies indicate that 1–MCP remains present in the air at or near nominal levels over the 6 to 24 hr exposure periods, and imply that 1–MCP does not non-specifically bind to the food in the storage rooms. This supports the above arguments that very low residues of 1–MCP would be expected on food treated with 1–MCP. Even if one assumed a 10% deposition rate of the airborne 1–MCP on the stored food, which is the variability of the measured results, only 0.9 ppb 1–MCP would be calculated to be on/in the apples. Finally, in the extreme worst case, if one assumed that all (100%) of the 1–MCP in the chamber was on the food, which is not possible given the above measurements of 1–MCP in the storage room air, then only 9 ppb 1–MCP would be calculated to be in/on the apples.

Overall, there is no reasonable expectation of detectable residues of 1–MCP on food commodities following post-harvest treatment with EthylBloc®.

3. *Analytical method*. A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed. An analytical method for residues of 1–MCP is not applicable, as this document proposes an exemption from the requirement of a tolerance.

*C. Mammalian Toxicological Profile*

1. *Acute toxicity*. Since 1–MCP is a gas at room temperature, most acute toxicity studies were conducted with EthylBloc® end-use product. EthylBloc® exhibits low acute toxicity. The rat oral $LD_{50}$ is greater than 5,000 milligrams/kilograms (mg/kg) product, and the rabbit dermal $LD_{50}$ is greater than 2,000 mg/kg product. In addition, EthylBloc® is not a skin sensitizer in guinea pigs, shows no dermal irritation in rabbits, and shows mild-to-moderate ocular irritation in rabbits. No mortalities or any toxic effects were observed in a rat acute inhalation toxicity study conducted with 165 parts per million (ppm) 1–MCP in the air.

2. *Genotoxicity*. Short-term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), a mouse lymphoma forward mutation assay, and a mouse *in vivo* micronucleus assay have been conducted using EthylBloc® end-use product as the test material. These studies showed a lack of genotoxicity for EthylBloc®/1–MCP.

3. *Other tests*. No additional mammalian toxicity testing has been conducted. BTH has requested waivers from the requirements to submit further mammalian toxicity studies on the basis of the favorable toxicological profile for EthylBloc®, its non-toxic mode of action (i.e., ethylene receptor binding), its low use rates (30–1,000 ppb v/v 1–MCP in air), its predicted low residue levels (0.004–0.4 ppb), and the predicted insignificant levels of exposure based on the confined nature of the proposed use (i.e., indoor use in enclosed chambers some of which will contain very low oxygen levels which absolutely necessitates no entry). No data were found in the literature that would indicate EthylBloc® or 1–MCP has any adverse effects on mammals or wildlife. No incidents of hypersensitivity or any other adverse effects have been observed in individuals handling the material over the past several years.

*D. Aggregate Exposure*

1. *Dietary exposure*. Any dietary exposure resulting from application of 1–MCP would be through food consumption.

i. *Food*. Residues in treated fruits and vegetables are predicted to be low (i.e., 0.004–0.4 ppb). Residues would be expected to continue to decline while treated food items remain in storage, and after food is removed from storage and before consumption. Cooking and/or processing would be expected to further lower the residues on treated food.

ii. *Drinking water*. Since 1–MCP would only be used indoors in enclosed storage areas, there is little if any potential for drinking water exposure.

2. *Non-dietary exposure*. EthylBloc® is to be used only indoors in enclosed commercial treatment areas. EthylBloc® is currently registered for use on flowers also for use indoors and in enclosed areas. Non-dietary exposure to 1–MCP via lawn care, topical treatments, etc., is not expected to occur. Thus, the potential for non-occupational exposure to the general population is virtually non-existent.

*E. Cumulative Exposure*

EPA is required to consider the potential for cumulative effects of 1–MCP and other substances that have a common mechanism of toxicity. Consideration of a common mode of toxicity is not appropriate given that there is no indication of mammalian toxicity for 1–MCP and no information that indicates toxic effects, if any, would be cumulative with any other compounds. Since 1–MCP exhibits a non-toxic mode of action in post-harvested fruits and vegetables, it is appropriate to consider only the potential risks of 1–MCP in this exposure assessment.

*F. Safety Determination*

1. *U.S. population*. Since there are no anticipated residues in drinking water or from other non-occupational sources, and no reliable information exists on cumulative effects due to a common mechanism of toxicity, the aggregate exposure to 1–MCP is adequately represented by the dietary route. The lack of toxicity of 1–MCP (administered as EthylBloc® end-use product) has been demonstrated by the results of acute toxicity testing in mammals in which EthylBloc® end-use product caused no adverse effects when dosed orally or dermally, and when 1–MCP was administered via inhalation. Anticipated residues in consumed treated fruits and vegetables are predicted to be low, below reasonable levels of analytical detection. Moreover, 1–MCP exhibits close similarity to the naturally occurring plant hormone ethylene, and to other plant-based, naturally occurring cyclopropene and cyclopropane derivatives. Thus, dietary exposure to 1–MCP should pose negligible risks to human health.

2. *Infants and children*. Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to 1–MCP residues. Exempting 1–MCP from the requirement of tolerances should pose no significant risk to humans or the environment.

*G. Effects on the Immune and Endocrine Systems*

BTH has no information to suggest that 1–MCP will adversely affect the immune or endocrine systems.

*H. Existing Tolerances*

There are no other established U.S. tolerances or exemptions from tolerances for 1–MCP.

*I. International Tolerances*

No maximum residue levels have been established for phosphorous 1–MCP by Codex Alimentarius Commission.

[FR Doc. 00–15166 Filed 6–20–00; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

June 14, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before July 21, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0465.

*Title:* Section 74.985, Signal Booster Stations.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, not-for-profit institutions.

*Number of Respondents:* 6,300.

*Estimated Time Per Response:* 5 minutes (.084 hours) to 5 hours.

*Frequency of Response:* Recordkeeping requirement, third party disclosure requirement, and on occasion reporting requirement.

*Total Annual Burden:* 919 hours.

*Total Annual Cost:* $2,252,500.

*Needs and Uses:* Section 74.985 requires signal booster stations to: (1) Submit engineering data or showings in specified forms to the FCC's duplicating contractor for public service records duplication; (2) to serve a copy of application (FCC Form 331) and accompanying engineering materials on affected co-channel or adjacent channel parties; and (3) to retain a copy of the application at the transmitter site. The data are sued to ensure that MDS and ITFS applicants and licensees have considered properly the potential for harmful interference from their facilities.

*OMB Control No.:* 3060–0027.

*Title:* Application for construction Permit for Commercial Broadcast Station.

*Form No.:* FCC Form 301.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 3,370.

*Estimated Time Per Response:* 37—121 hours.

*Frequency of Response:* Third party disclosure requirement, and on occasion reporting requirement.

*Total Annual Burden:* 7,427 hours.

*Total Annual Cost:* $35,485,300.

*Needs and Uses:* On January 20, 2000, the Commission adopted a Report and Order in MM Docket Nos. 98–204 and 96–16, which modified the Commission's broadcast and cable EEO rules and policies consistent with the D.C. Circuit Court's decision in the Luther Church matter. The new EEO rules ensure equal employment opportunity in the broadcast industry through vigorous outreach and prevention and prevention of discrimination. With the adoption of this Report and Order, the Commission reinstates the requirement that broadcast applicants file the FCC Form 396–A at the time they file an application for a new construction permit. The Commission revised the FCC Form 301 to add a question to advise respondents that they are required to submit the FCC Form 396–A at the time they apply for a new construction permit. The data is used by the Commission to determine whether an applicant meets basic statutory requirements to become a Commission licensee and to ensure that the public interest would be served by grant of the application.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–15577 Filed 6–20–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 12:01 p.m. on Friday, June 16, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution activities.

In calling the meeting, the Board determined on motion of Vice ChairmanAndrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Ms. Leann G. Britton, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to the public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW, Washington, DC.

Dated: June 16, 2000.

Federal Deposit Insurance Corporation.

**Valerie J. Best,**

*Assistant Executive Secretary.*

[FR Doc. 00–15765 Filed 6–19–00; 12:59 am]

BILLING CODE 6714–01–M

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011075–052.

*Title:* Central America Discussion Agreement.

*Parties:*

Concorde Shipping, Inc.
Dole Ocean Cargo Express
Crowley Liner Services Inc.
Seaboard Marine, Ltd.
A.P. Moller-Maersk Sealand
Trinity Shipping Line, S.A.
APL Co. Pte. Ltd.
Nordana Line
P&O Nedlloyd Limited
King Ocean Central America, S.A.
Crowley American Transport, Inc.

*Synopsis:* The proposed modification deletes South Pacific Shipping Company, Ltd. as a party and revises the agreement to clarify the parties' authority with respect to time/volume rates.

*Agreement No.:* 011383–031.

*Title:* Venezuelan Discussion Agreement.

*Parties:*

Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck, d/b/a Columbus Line
Nordana Line
A.P. Moller-Maersk SeaLand
Venezuelan Container Line C.A.
Lykes Lines Limited, LLC.
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck, d/b/a Crowley American Transport
American President Lines, Ltd.
Seaboard Marine Ltd.
Crowley Liner Services, Inc.
King Ocean Services, S.A.
SeaFreight Line

*Synopsis:* The amendment restates the agreement, deletes superfluous language, and permits any two or more of the parties to negotiate and enter into joint service contracts. The parties request expedited consideration.

Dated: June 16, 2000.

By Order of the Federal Maritime Commission.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 00–15669 Filed 6–20–00; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary LicenseTerminations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been terminated pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding dates shown below:

LICENSE NUMBER: 4177
NAME: 5 H Corporation d/b/a International Shipping Inc.
ADDRESS: 341 Battlement Way, Alexandria, VA 22312
DATE REVOKED: June 9, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4458
NAME: AA Freight Forwarders, Inc.
ADDRESS: 2618 N.W. 112th Avenue, Miami, FL 33172
DATE REVOKED: March 28, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3807
NAME: A & M International Service Corp.
ADDRESS: 2210 N.W. 92nd Avenue, Miami, FL 33172
DATE REVOKED: May 5, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4278
NAME: Advanced Shipping Agencies, Inc.
ADDRESS: 36 George Street, Bloomfield, NJ 07003–4318
DATE REVOKED: June 9, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4347
NAME: Advantage Worldwide Logistics, Inc.
ADDRESS: 9998 North Michigan Road, Carmel, IN 46032
DATE REVOKED: May 26, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3741
NAME: Action Forwarding, International Freight, Inc.
ADDRESS: 7986 N.W. 14th Street, Miami, FL 33126
DATE REVOKED: July 18, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4549
NAME: Afsaneh Saei-Oskoei d/b/a Eastern International
ADDRESS: 8411 Mobud, Houston, TX 77036
DATE REVOKED: August 18, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3405
NAME: Amber Marine International, Ltd.
ADDRESS: 1554 Carmen Drive, Elk Grove Village, IL 60007
DATE REVOKED: February 20, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3324
NAME: America's Expresso, Inc.
ADDRESS: 5487 N.W. 72nd Avenue, Miami, FL 33166
DATE REVOKED: February 20, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4194
NAME: Arriage & Associates, Inc.
ADDRESS: 9011 Sheldon Road, Houston, TX 77049
DATE REVOKED: October 1, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2504
NAME: Atlantic International Freight Forwarders, Inc.
ADDRESS: 6531 N.W. 87th Avenue, P.O. Box 522477, Miami, FL 33152–2477
DATE REVOKED: September 8, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2469
NAME: Blackstar Transport Services Inc.—Acts
ADDRESS: 2744 Seymour Avenue, Bronx, NY 10469
DATE REVOKED: December 10, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3996
NAME: Blue Pacific Services
ADDRESS: 100 Oceangate, Suite 788, Long Beach, CA 90802
DATE REVOKED: September 7, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 1042
NAME: Carl Matusek, Inc.
ADDRESS: 8536 N.W. 66th, Miami, FL 33166
DATE REVOKED: December 1, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4611
NAME: Boston Logistics, Inc.
ADDRESS: 186A Lee Burbank Highway, Revere, MA 02151

DATE REVOKED: March 23, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2172
NAME: Chenice Freight Services, Inc.
ADDRESS: 264 Holmes Street, Belleville, NJ 07109
DATE REVOKED: September 19, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4162
NAME: CJC International Services, Inc.
ADDRESS: 8745 N.W. 100th Street, Medley, FL 33178
DATE REVOKED: September 29, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2976
NAME: Cole Forwarding, Inc.
ADDRESS: 1901 East Lambert Road, Suite 201, La Habra, CA 90631
DATE REVOKED: March 30, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3884
NAME: Consolidated Incorporated Of Orlando
ADDRESS: 767 Citrus Cove Drive, Winter Garden, FL 34787
DATE REVOKED: November 11, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3265
NAME: Cynthia J. Dee d/b/a Midwest Agencies Company
ADDRESS: 3426 S. Lenox Street, Milwaukee, WI 53207
DATE TERMINATED: March 6, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 4062
NAME: DMK International Logistics, Inc.
ADDRESS: 256 N. Sam Houston Pkwy. E., Ste. 206, Houston, TX 77060
DATE REVOKED: November 26, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3908
NAME: E & S Shipper, Inc.
ADDRESS: 1201 Broadway, Ste. 809, New York, NY 10001
DATE REVOKED: September 3, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4392
NAME: EAS International (USA) Inc.
ADDRESS: 880 Apollo Street, Ste. 351, El Segundo, CA 90245
DATE REVOKED: October 1, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4625
NAME: E–Z Shipping Line Corp.
ADDRESS: 1355 NW 93rd Ct., Ste. A–108, 2nd Floor, Miami, FL 33172
DATE REVOKED: May 5, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4013
NAME: Eldon D. Spencer d/b/a Ocean Customs Brokers
ADDRESS: 8554 Katy Freeway, Ste. 123, Houston, TX 77024
DATE REVOKED: October 15, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4385
NAME: Elliott C. Penalosa d/b/a EP International Shipping
ADDRESS: 8336 Hindry Avenue, Los Angeles, CA 90045–3206
DATE REVOKED: June 29, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4434
NAME: Express International, Inc.
ADDRESS: 3842 Durazno, Ste. B, El Paso, TX 79903
DATE REVOKED: December 15, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3855
NAME: Friendly Forwarding Services, Inc.
ADDRESS: 7959 NW 21st Street, P.O. Box 441519, Miami, FL 33144–1519
DATE REVOKED: May 5, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2707
NAME: G & J International Corporation
ADDRESS: P.O. Box 524041, Miami, FL 33152
DATE REVOKED: December 12, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4075
NAME: Gina T. Fregosi d/b/a Red Hot Transport
ADDRESS: 618 Noe Street, San Francisco, CA 94114–0816
DATE REVOKED: July 8, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4451
NAME: Global Marine Services, Inc.
ADDRESS: 12705 Caron Drive, Jacksonville, FL 32258
DATE REVOKED: September 22, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3540
NAME: Gulf International Freight, Inc.
ADDRESS: 14720 Lee Road, Humble, TX 77396
DATE REVOKED: February 11, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3487
NAME: H.P. Blanchard & Co.
ADDRESS: 100 West Broadway, Ste. 200, Long Beach, CA 90802
DATE REVOKED: November 26, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4461
NAME: Hansa U.S.A. Corp.
ADDRESS: 2654 NW 112th Avenue, Miami, FL 31728
DATE REVOKED: March 3, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2955
NAME: Harper International, Incorporated
ADDRESS: 820 Highland Bend Cove, Apharetta, GA 30022
DATE REVOKED: December 4, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3219
NAME: Ice-USA, Inc. d/b/a Viking Shipping
ADDRESS: 2204 Commerce Parkway, Virginia Beach, VA 23454
DATE REVOKED: July 7, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3914
NAME: Indigo International, Inc.
ADDRESS: 140 North Main Street, Ste. 101, Summerville, SC 29483
DATE REVOKED: September 29, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 354F
NAME: Inter-Maritime Forwarding Co., Inc.
ADDRESS: 39 Broadway (29th floor), New York, NY 10006
DATE TERMINATED: March 20, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 2498
NAME: Inter-Maritime Forwarding Co. (California) Inc.
ADDRESS: 11099 S. LaCienega Blvd., Ste. 240, Los Angeles, CA 90045
DATE TERMINATED: March 20, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 2499
NAME: Inter-Maritime Forwarding Company Florida, Inc.
ADDRESS: 2601 N.W. 104th Court., Miami, FL 33172
DATE TERMINATED: March 20, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 15419F
NAME: Inter-Maritime Forwarding Co. (San Francisco), Inc.
ADDRESS: 55 New Montgomery Street, San Francisco, CA 94105
DATE TERMINATED: March 20, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 4457
NAME: International Forwarding and Logistics Inc.

ADDRESS: 2653 Veneer Street, Charleston, SC 29405
DATE REVOKED: February 20, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4460
NAME: International Shipping Management U.S.A., Inc.
ADDRESS: 1630 Bath Avenue, Brooklyn, NY 11214
DATE REVOKED: March 4, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4570
NAME: International Transportation Consultants, Ltd.
ADDRESS: 1551–53 Carmen Drive, Elk Grove Village, IL 60007
DATE REVOKED: March 30, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2362
NAME: J. Hansen International, Inc.
ADDRESS: 11500 South Main Street, Ste. 126, Houston, TX 77025
DATE REVOKED: March 10, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4039
NAME: J.B. Rothenberg & Co., Inc. d/b/a/ J.B.R. Shipping
ADDRESS: 127 Tingley Lane, Edison, NJ 08820
DATE REVOKED: November 18, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4040
NAME: Joseph Rizzari d/b/a Air Pax
ADDRESS: 20 Old County Road, Ste. 15, P.O. Box 3158, Windsor Locks, CT 06096–3158
DATE REVOKED: June 9, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4493F
NAME: Kazma Karen Lee d/b/a Axis Freight Forwardering
ADDRESS: 2624 South Sanford Avenue, Sanford, FL 32773
DATE TERMINATED: March 20, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 3990F
NAME: King Yang Shipping, Inc.
ADDRESS: 300 South Garfield Avenue, #108
DATE TERMINATED: May 31, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 4244
NAME: Long International Logistics Services, Inc.
ADDRESS: P.O. Box 58587, Raleigh, NC 27658
DATE TERMINATED: August 13, 1999.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 3872
NAME: Lori Ann Wren d/b/a Export NW
ADDRESS: 845 NE Arrington Rd., Hillsboro, OR 97124
DATE TERMINATED: December 2, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4370
NAME: M Ahmed M Hossain d/b/a Gulf Shipping & Trading Group
ADDRESS: 5881 Leesburg Pike, #301 Falls Church, VA 22041
DATE REVOKED: December 18, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4288
NAME: Magdoleen T. Ierlan d/b/a K & M International Co.
ADDRESS: 8066 Thurston Drive, Cicero, NY 13039
DATE REVOKED: March 12, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4418
NAME: Martha A. Works d/b/a Unlimited Logistics
ADDRESS: 2395 Giltner Road, Smithfield, KY 40068
DATE REVOKED: June 9, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3259
NAME: MBC Freight Consultants (USA), Inc.
ADDRESS: 30 Willow Street, Chelsea, MA 02150
DATE REVOKED: January 26, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4345
NAME: M H Shipping, Inc.
ADDRESS: 3624 Marietta Drive, Chalmette, LA 70043
DATE REVOKED: November 26, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4361
NAME: Mi Son Kim d/b/a Hyzoom Express Co.
ADDRESS: 203 South Hampton Street, Anahaim, CA 92804
DATE REVOKED: August 22, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3399
NAME: Oceanbridge Shipping International, Inc.
ADDRESS: 18732 Crenshaw Blvd., Torrance, CA 90504
DATE REVOKED: February 23, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3031
NAME: Osvaldo Marrero d/b/a Professional Services
ADDRESS: 2070 N.W. 79th Avenue, Miami, FL 33126
DATE TERMINATED: February 1, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 3196
NAME: Palm Beach Forwarding International, Inc.
ADDRESS: 15053 Palmwood Road, Palm Beach Gardens, FL 33410
DATE REVOKED: May 27, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4519
NAME: Paul Yoon d/b/a Asian Pacific Logistics
ADDRESS: 23202 Audrey Avenue, Torrance, CA 90505–3710
DATE REVOKED: February 22, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4342
NAME: Philip Island International Inc.
ADDRESS: 2758 Magnolia Road, Vineland, NJ 08360
DATE REVOKED: July 22, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4582
NAME: Rockets Cargo, Incorporated
ADDRESS: 9805 N. Bissonnet, Houston, TX 77036
DATE REVOKED: October 16, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2967
NAME: Rutherford International Group Ltd. d/b/a Rutherford Forwarding Co.
ADDRESS: 14 Commercial Blvd., Ste. 115, Novato, CA 94949
DATE REVOKED: March 4, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4423
NAME: S.A. Maritime International, Inc.
ADDRESS: 10333 NW Freeway, Suite 317, Houston, TX 77092–6217
DATE REVOKED: December 4, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 15733
NAME: Sari Express, Inc.
ADDRESS: 6810 N.W. 82nd Avenue, Miami, FL 33166
DATE REVOKED: January 7, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3951
NAME: Savannah Steamship Company, Inc.
ADDRESS: 12½ W. State Street, Savannah, GA 31412
DATE REVOKED: June 10, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3263

NAME: Ship and Strap, Inc.
ADDRESS: 7262 N.W. 70th Street, Miami, FL 33166
DATE REVOKED: December 12, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4000
NAME: Sunway International, Inc.
ADDRESS: 2531 Ambling Cir., Crofton, MD 21114
DATE REVOKED: January 6, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2134
NAME: T-Bird Forwarders, Inc.
ADDRESS: 900 Wilshire Blvd., Suite 404, Los Angeles, CA 90017
DATE REVOKED: March 12, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2571
NAME: Takashi Uryu d/b/a Central Shipping Company
ADDRESS: 1680 Post Street, #E, San Francisco, CA 94115
DATE REVOKED: April 9, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4165
NAME: Timothy Voit d/b/a S & T Shipping
ADDRESS: 118½ North Woodland Blvd., Suite 3, Deland, FL 32720
DATE REVOKED: August 18, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2503
NAME: Trade Winds Forwarding, Inc.
ADDRESS: 8100 NW 68th Street, Miami, FL 33166
DATE REVOKED: Jauary 20, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4533
NAME: Trans-Ocean International Inc.
ADDRESS: 150 N. Santa Anita Avenue, #580, Arcadia, CA 91006
DATE REVOKED: November 21, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 3291
NAME: Transit Cargo Services, Inc.
ADDRESS: 1001 Durham Avenue, So. Plainfield, NJ 07080–2300
DATE REVOKED: December 29, 1999.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4218
NAME: United Shipping Agent, Inc.
ADDRESS: Port Authority, Terminal 3, Wilmington, NC 28401
DATE REVOKED: January 29, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 4139
NAME: USF Seko Worldwide Inc.
ADDRESS: 1100 Arlington Heights Road, Ste. 600, Itasca, IL 60143
DATE TERMINATED: February 7, 2000.
REASON: Surrendered license voluntarily.

LICENSE NUMBER: 4393
NAME: Worldserv Transport Corporation
ADDRESS: 12282 Gamma Street, Garden Grove, CA 92840
DATE REVOKED: March 17, 2000.
REASON: Failed to maintain a valid bond.

LICENSE NUMBER: 2584
NAME: Young S. Kim d/b/a Ace Young Company
ADDRESS: 147–29 183rd Street, Jamaica, NY 11413
DATE TERMINATED: February 28, 2000.
REASON: Surrendered license voluntarily.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–15672 Filed 6–20–00; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

**[Ocean Transportation Intermediary License No. 1929–R]**

### Perez International Forwarders, Inc.; Order of Revocation

Section 19c of the Shipping Act of 1984 provides that the Federal Maritime Commission (''Commission'') may revoke an ocean transportation intermediary's (''OTI'') license for failure to maintain a valid bond, proof of insurance, or other surety in accordance with subsection (b)(1) of said section. The Commission's regulations, in 46 CFR 515.26, financial responsibility is maintained on file with the Commission. Upon receipt of notice of termination of such financial responsibility the Commission shall notify the licensee, that the Commission shall, without hearing or other proceeding, revoke the license as of the termination date, unless the licensee shall have submitted valid replacement proof of financial responsibility before such termination date.

The bond issued in favor of Perez International Forwarders, Inc., was cancelled effective April 14, 2000. The Commission notified licensee that its OTI ocean freight forwarder license would be revoked unless the Commission received valid proof of financial responsibility with an effective date on or before April 14, 2000. The licensee has failed to furnish valid proof of financial responsibility.

*Therefore,* by virtue of the authority vested in me by the Commission as set forth in 46 CFR 501.27(g) (1999);

*Notice is Hereby Given,* that OTI ocean freight forwarder license No. 1929–R issued to Perez International Forwarders, Inc. is hereby revoked effective April 14, 2000.

*It is Ordered,* that OTI license No. 1929–R be returned to the Commission for cancellation.

*It is Further Ordered,* that a notice of this action be published in the **Federal Register** and that a copy of this Order be served upon Perez International Forwarders, Inc.

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–15774 Filed 6–20–00; 8:45 am]

**BILLING CODE 6730–01–M**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Sunice Cargo Logistics, Inc., 930 W. Hyde Park Blvd., Inglewood, CA 90302, Officers: Hani Wu (Annie), Secretary/CFO, (Qualifying Individual), Eik H. Ng, President

Maritrans Shipping, Ltd., 639 Boelsen Drive, Westbury, NY 11590, Officer: Michael De Fillippis, President, (Qualifying Individual)

American International, Inc., 2191 Main Street, San Diego, CA 92113, Officers: Kenneth P. Timmons, Manager, (Qualifying Individual), Philip A. Cubilla, CEO

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Saving Shipping & Forwarding USA, Inc., 2250 Landmeier Road, Suite E, Elk Grove Village, IL 60007, Officers: Robert A. Zabka, Exec. Vice President, (Qualifying Individual), Piergiorgio Igles Bono, President

7M Transport, Inc., 18306 Lazy Moss Lane, Spring, TX 77379, Officer: Howard Leff, President, (Qualifying Individual)

Caseth Logistics Inc., 61 Edgewood Avenue, Wyckoff, NJ 07481, Officers: Manufl Hagalhaes, Oceanfreight Manager, (Qualifying Individual), Charm Yuen Chee, President

DBA Distribution Services, Inc., Building 2W Chimney Rock Road, P.O. Box 6707, Bridgewater, NJ 08807, Officers: Michael J. Capezza, Vice President, (Qualifying Individual), Norman Rosenbaum, President

Trans-Atlantic Freight Forwarding, 13 Tall Oaks Road, Somerset, NJ 08873, Officer: Phipps Ernest Annov-Achampwh, President, (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Prudential Residential Services, Limited Partnership, d/b/a Prudential Relocation, 3333 Michelson Dr., Suite 100, Irvine, CA 92612, Officers: Michael Cazalet, Director, (Qualifying Individual), John R. Van Der Wall, CEO, John Springer, Chairman

Hanover Navigation Limited, 55 Green Street, San Francisco, CA 94111, Officer: Brian Darnowski, Vice President, (Qualifying Individual)

Promax Automotive, Inc., 300 River Place, Suite 3000, Detroit, MI 48207–4291, Officers: Toshimasa Nabeshima, Vice President, (Qualifying Individual), Ryohei Ito, Director/President

CIF Group International Inc., 11013 N.W. 30th Street, #115, Miami, FL 33172, Officer: Chen Sun, President, (Qualifying Individual)

Dated: June 16, 2000.

**Theodore A. Zook,**

*Assistant Secretary.*

[FR Doc. 00–15670 Filed 6–20–00; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Performance Review Board

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the names of the members of the Performance Review Board.

**FOR FURTHER INFORMATION CONTACT:** Harriette H. Charbonneau, Director of Human Resources, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573.

**SUPPLEMENTARY INFORMATION:** Section 4314(c) (1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

**Harold J. Creel, Jr.,**

*Chairman.*

**The Members of the Performance Review Board Are**

1. Joseph E. Brennan, Commissioner
2. Antony M. Merck, Commissioner
3. John A. Moran, Commissioner
4. Delmond J.H. Won, Commissioner
5. Norman D. Kline, Chief Administrative Law Judge
6. Frederick M. Dolan, Jr., Administrative Law Judge
7. Thomas Panebianco, General Counsel
8. Bryant L. VanBrakle, Secretary
9. Bruce A. Dombrowski, Executive Director
10. Vern W. Hill, Director, Bureau of Enforcement
11. Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing
12. Florence A. Carr, Deputy Executive Director
13. Austin L. Schmitt, Director, Bureau of Trade Analysis

[FR Doc. 00–15671 Filed 6–20–00; 8:45 am]

**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

**SUMMARY:** Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing projects: (a) Ethical issues in international research and (b) ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on July 10 from 1:00–1:30 pm.

| Dates/times | Location |
|---|---|
| July 10, 2000—8:30 am–5:00 pm. | Hyatt Regency Bethesda, One Bethesda Metro Center, Wisconsin Avenue at Old Georgetown Road, Bethesda, Maryland. |
| July 11, 2000—8:00 am–4:00 pm. | Same location as above. |

**SUPPLEMENTARY INFORMATION:** The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

**Public Participation**

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone (301) 402–4242, fax number (301) 480–6900.

Dated: June 14, 2000.

**Eric M. Meslin,**

*Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 00–15548 Filed 6–20–00; 8:45 am]

**BILLING CODE 4167–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F, of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), 49 FR 34247, dated September 6, 1984, is amended to include the following delegation of authority from the Secretary to the Administrator, HCFA, for carrying out Title XXII of the Public Health Service Act, as amended.

• Section F.30., Delegations of Authority is amended by adding the following paragraph:

vv. The authority vested in the Secretary by Title XXII of the Public Health Service Act, as amended.

This delegation shall be exercised under the Department's policy on issuance of regulations. In addition, I hereby affirm and ratify any actions taken by the Administrator, or other HCFA officials which, in effect, involved the exercise of this authority prior to the effective date of this delegation. This delegation is effective immediately, and may be further redelegated. This delegation of authority supersedes the memorandum from the Secretary to the Assistant Secretary for Health, dated March 2, 1987, entitled ''Delegation of Authority for Title XXII of the Public Health Service Act, Public Law 99–272, Section 10003.''

Dated: June 12, 2000.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–15549 Filed 6–20–00; 8:45 am]

BILLING CODE 4120–03–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00117]**

### Prevention and Control of Micronutrient Malnutrition; 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 for the Prevention and Control of Micronutrient Malnutrition.

#### B. Eligible Applicant(s)

*Single Source*

Assistance will be provided only to the United Nations Children's Fund (UNICEF), New York, New York. No other applications are solicited.

UNICEF is the most appropriate and qualified agency to conduct the activities under this cooperative agreement because:

1. UNICEF is the only organization that has country-based offices to support direct delivery of public health programs and services in nearly every country in the world. Additionally, UNICEF's mandate addresses issues other than health, *e.g.,* education; and this has enabled UNICEF programs to advocate more effectively for micronutrient deficiency intervention programs across multiple sectors of society because of the significant impact of such programs on health as well as education of populations. In addition to national offices, UNICEF supports sub-national programs which allow it direct access to local public health and education programs.

2. UNICEF supports micronutrient deficiency intervention programs around the world through the distribution of vitamin A capsules, as well as iron and folic acid supplements to target populations. UNICEF supports country-based salt iodization programs around the world to reduce the burden of iodine deficiency disorders.

3. The proposed program is strongly supportive of, and directly related to, the achievement of UNICEF and the CDC/Micronutrient Malnutrition Program objectives for the prevention and control of micronutrient malnutrition.

#### C. Availability of Funds

Approximately $700,000 is available in FY 2000 to fund one award. 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 two years.

#### D. Where To Obtain Additional Information

Business management technical assistance may be obtained from: Van A. King, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Announcement [00117], 2920 Brandywine Road, Room 3000, Atlanta, GA 30341, Telephone Number (770) 488–2751, Email Address vbk5@cdc.gov.

Program technical assistance may be obtained from: Ibrahim Parvanta, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–25, Atlanta, GA 30341–3724, Telephone Number (770) 488–5865, Email Address ixp1@cdc.gov.

Dated: June 14, 2000.

**Henry S. Cassell, III,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–15584 Filed 6–20–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

*Name:* Public Meeting to Review and Re-evaluate Safe Airborne Exposure Limits (AELs) of Nerve Agents GA, GB and VX.

*Time and Dates:* 8 am–5 pm, Wednesday, August 23, 2000.

8 am–5 pm, Thursday, August 24, 2000.

*Place:* J.W. Marriott Hotel, 3300 Lenox Road NE, Atlanta, GA 30326, telephone 404/262–3344. For overnight accommendations, a special room rate is available until Friday, July 21, 2000.

*Status:* Open to the public, limited only by space available. The meeting room accommodates approximately 100 people.

*Background:* Chemical warfare materials agents GA, GB, and VX are no longer manufactured in the U.S.; however, they currently are stored at 8 locations in the continental U.S. by the Department of Defense (DOD). Public Law (Pub. L.)99–145 (50 U.S.C. 1521) mandates that these stockpiled lethal chemical agents be destroyed. In 1970, Pub. L. 91–121 and Pub. L. 91–441 (50 U.S.C. 1521) mandated that the Department of Health and Human Services must review DOD plans for disposing of the munitions and make recommendations to protect human health. In 1987, CDC requested public comment on recommendations for protecting human health and the environment against potential adverse effects of long-term exposure to low doses of agents: G, GB, VX, Mustard (H, HD, T) and Lewisite (L). CDC incorporated the public comments and in 1988 recommended control limits for air exposures to agents GA, GB, and VX for protection of workers involved in the demilitarization process and for the general public living in areas adjacent to demilitarization facilities. The Army adopted these control limits into policy in 1990. Now, twelve years later, CDC is recommending that these control limits be re-evaluated based on newly developed risk

models and any updated scientific data. Additionally, the U.S. Army Center for Health Promotion and Prevention Medicine (USACHPPM) has overseen an initiative to re-evaluate existing AELs for chemical warfare agents and to develop new levels based on currently accepted risk assessment approaches and incorporation of data which has recently become available.

*Purpose:* The purpose of this meeting is to review the AELs set for GA, GB, and VX based on the 1988 recommendations from CDC and determine modifications required to update these limits to reflect current findings. Based on new risk assessment models and any available scientific data, CDC will engage nerve agent experts and the public in an evaluation of the current limits and recommend updated limits based on the public comments.

To facilitate the public dialogue, CDC will provide a forum for general public interaction and serve as a vehicle for members of the public to provide their individual concerns.

*Matters To Be Discussed:* Agenda items include (1) presentation of newly developed risk assessment models and scientific data, (2) panel discussion by nerve agent specialists,(3) recommended modifications to existing levels based on panel comments, and (4) collect public comments on proposed new AELs.

There will be time for public input, questions, and comments.

Agenda items are subject to change as priorities dictate.

*Contact Person for Additional Information:* Sascha Beck, Chemical Demilitarization Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 4770 Buford Highway NE (F–16), Atlanta, Georgia, 30341–3724, telephone 770/488–4078, fax 770/488–4127.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for the Centers for Disease Control and Prevention.

Dated: June 15, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–15585 Filed 6–20–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

*Time and Date:* 9 a.m.–3:30 p.m., July 18, 2000.

*Place:* The Washington Court, 525 New Jersey Avenue, NW, Washington, DC 20001–1527.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Purpose:* The BSC, NIOSH is charged with providing advice to the Director, NIOSH on NIOSH research programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

*Matters To Be Discussed:* Agenda items include a report from the Director of NIOSH; Agriculture Subcommittee Interim Report; Beryllium Research Collaboration; Report on Institute of Medicine Workforce Needs Assessment; NIOSH/NCI Diesel Study: Update and Review of Case-Control Study Questionnaire; Overview of Work Organization Research in NIOSH; and future activities of the Board.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* James W. Stephens, Ph.D., Executive Secretary, BSC, NIOSH, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–3773, fax 404/639–2170, e-mail: jws9@cdc.gov.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: June 15, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–15583 Filed 6–20–00; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Information Collection Items in the Head Start Performance Standards (current rule).

*OMB No.:* 0970–0148.

*Description:* The Head Start Performance Standards are regulations which establish standards for Head Start grantee and delegate agencies to follow to administer quality programs as required by law. Local programs are monitored for compliance with these standards. The information collection aspects of the Performance Standards are one part of the many actions that local agencies must take to ensure they administer quality programs. Almost all these information collection items are record keeping requirements such as recording: nutrition assessment data, family Partnership development, and regular volunteer screening for tuberculosis. These records are intended to act as a management tool for grantees to use in their daily operations. Such records are maintained by the grantees and are not information items which must be collected and then forwarded to he Federal government.

*Respondents:* Head Start grantee and delegate agencies

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Head Start Performance Standards | 2,472 | 1 | 594 | 1,468,626 |
| Estimated Total Annual Burden Hours. | | | | 1,468,626 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the *Federal Register.* Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written

comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: June 15, 2000.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–15547 Filed 6–20–00; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00P–0842]**

### Determination That Ranitidine Effervescent 75–Milligram Tablet Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its determination that ranitidine effervescent 75-milligram (mg) tablet (Zantac Efferdose) was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for ranitidine effervescent 75-mg tablet.

**FOR FURTHER INFORMATION CONTACT:** Andrea C. Masciale, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Ranitidine effervescent 75-mg tablet is the subject of NDA 20–745. FDA approved NDA 20–745, held by Glaxo Wellcome, Inc. (Glaxo), on February 26, 1998. Glaxo never marketed the ranitidine effervescent 75-mg tablet. Glaxo transferred ownership of NDA 20–745 to the Warner-Lambert Co. (Warner-Lambert) effective January 1, 1999. To date, Warner-Lambert has not marketed the ranitidine effervescent 75-mg tablet.

On March 1, 2000, Thomas Blake, R.Ph., submitted a citizen petition (Docket No. 00P–0842/CP1) under 21 CFR 10.30 to FDA. The petition requested that the agency determine whether ranitidine effervescent 75-mg tablet was withdrawn from sale for reasons of safety or effectiveness. FDA has determined that, for the purposes of § 314.161, never marketing an approved drug product is equivalent to withdrawing the drug product from sale.

FDA has reviewed its records and, under § 314.161, has determined that the decision by Glaxo and Warner-Lambert not to market ranitidine effervescent 75-mg tablet was not for reasons of safety or effectiveness. Accordingly, the agency will maintain ranitidine effervescent 75-mg tablet in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to ranitidine effervescent 75-mg tablet may be approved by the agency.

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15555 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00P–0585]**

### Determination That Fluoxetine Hydrochloride 20–Milligram Tablets Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its determination that fluoxetine hydrochloride 20-milligram (mg) tablets (Prozac®) were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for fluoxetine hydrochloride 20-mg tablets.

**FOR FURTHER INFORMATION CONTACT:** Carol E. Drew, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With

Therapeutic Equivalence Evaluations,'' which is generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Regulations also provide that the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

On February 11, 2000, Lachman Consultant Services, Inc., submitted a citizen petition (Docket No. 00P–0585/CP1) under 21 CFR 10.30 to FDA. The petition requested that the agency determine whether fluoxetine hydrochloride 20-mg tablets were withdrawn from sale for reasons of safety or effectiveness. Fluoxetine hydrochloride 20-mg tablets are the subject of NDA 20–974. FDA approved NDA 20–974, held by Eli Lilly and Co., on March 9, 1999. On April 2, 1999, Eli Lilly and Co. informed FDA that it had decided not to market fluoxetine hydrochloride 20-mg tablets. FDA has determined that, for purposes of §§ 314.161 and 314.162, never marketing an approved drug product is equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under § 314.161, has determined that Eli Lilly and Co.'s decision not to market fluoxetine hydrochloride 20-mg tablets was not for reasons of safety or effectiveness. Accordingly, the agency will continue to list fluoxetine hydrochloride 20-mg tablets in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to fluoxetine hydrochloride 20-mg tablets may be approved by the agency.

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15556 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00P–0090]**

### Determination That Paroxetine Hydrochloride 10-, 20-, 30-, and 40-Milligram Capsules Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined that paroxetine hydrochloride (Paxil) 10-, 20-, 30-, and 40-milligram (mg) capsules were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for paroxetine hydrochloride 10-, 20-, 30-, and 40-mg capsules.

**FOR FURTHER INFORMATION CONTACT:** Mary E. Catchings, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

**SUPPLEMENTARY INFORMATION:** In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (the 1984 amendments) (Public Law 98–417), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDA's do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(6) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(6)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products with Therapeutic Equivalence Evaluations,'' generally known as the ''Orange Book.'' Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Under § 314.161(a)(1) (21 CFR 314.161(a)(1)) the agency must make a determination as to whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

In a citizen petition dated December 28, 1999 (Docket No. 00P–0090/CP1), submitted under 21 CFR 10.25(a), 10.30, and 314.122, Pentech Pharmaceuticals, Inc., requested that the agency determine whether paroxetine hydrochloride (Paxil) 10-, 20-, 30-, and 40-mg capsules were withdrawn or withheld from sale for reasons of safety or effectiveness. Paroxetine hydrochloride (Paxil) 10-, 20-, 30-, and 40-mg capsules are the subject of approved NDA 20–885 held by SmithKline Beecham Pharmaceuticals (SKB). SKB obtained approval to market the 10-, 20-, 30-, and 40-mg strengths of paroxetine hydrochloride capsules on October 9, 1998. SKB has never marketed the 10-, 20-, 30-, and 40-mg strengths of paroxetine hydrochloride capsules. FDA has determined, for purposes of §§ 314.161 and 314.162(c), that never marketing an approved drug product is equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that paroxetine hydrochloride 10-, 20-, 30, and 40-mg capsules were not withdrawn from sale for reasons of safety or effectiveness. Accordingly the agency will maintain paroxetine hydrochloride 10-, 20-, 30-, and 40-mg capsules in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to paroxetine hydrochloride 10-, 20-, 30-, and 40-mg capsules may be approved by the agency.

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15630 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1335]**

### Draft Guidance for Industry on Allergic Rhinitis: Clinical Development Programs for Drug Products; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Allergic Rhinitis: Clinical Development Programs for Drug Products.'' This draft guidance is intended to assist sponsors of new drug applications (NDA's) in designing development programs for oral and intranasal drug products for the treatment of allergic rhinitis in children and adults.

**DATES:** Submit written comments on the draft guidance by September 19, 2000. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Martin H. Himmel, Center for Drug Evaluation and Research (HFD–570), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1050.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance for industry entitled ''Allergic Rhinitis: Clinical Development Programs for Drug Products.'' Information about the pathophysiology and treatment of allergic rhinitis and its subtypes, seasonal allergic rhinitis (SAR), and perennial allergic rhinitis (PAR) has grown markedly in the past decade. The recommendations in this draft guidance are based on a careful assessment of important issues raised in the review of both adult and pediatric allergic rhinitis clinical trials and the agency's current understanding of the mechanism of the two related disorders of SAR and PAR. The draft guidance addresses issues of study design, data analysis, evaluation, and overall considerations for pediatric and adult trials.

This draft guidance includes recommendations on patient selection, inclusion and exclusion criteria, choice of primary and secondary endpoints, statistical analysis, safety monitoring, evaluation of the onset of action, durability of effect, and prophylaxis trials. The draft guidance also discusses abbreviated development programs that may be conducted for a formulation or device change. When finalized, this draft guidance will replace the previous guidance document entitled ''Points to Consider: Clinical Development Programs for New Nasal Spray Formulations'' (January 1996).

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on development programs for oral and intranasal drug products for the treatment of allergic rhinitis in children and adults. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15632 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1306]**

### Draft Guidance for Industry on the Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics.'' The agency has initiated a comprehensive effort to improve the content and format of prescription drug labeling. This draft guidance is the first in a series of guidance documents on the content and format of individual labeling sections. FDA intends to carefully coordinate development and implementation of these various labeling initiatives to minimize the potential burden for manufacturers and other affected parties.

**DATES:** Submit written comments on the draft guidance by September 19, 2000. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or at http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX, or Voice Information System at 800–835–4709. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Janet M. Jones, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration,

5600 Fishers Lane, Rockville, MD 20857, 301–594–6758, or

Toni M. Stifano, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6190, e-mail: stifano@cber.fda.gov.

**SUPPLEMENTARY INFORMATION:** As part of a comprehensive effort to make prescription drugs safer to use, FDA is engaged in several initiatives to make prescription drug labeling a better information source for health care practitioners—clearer, more informative, more accessible, and more consistent from drug to drug. FDA is developing and intends to publish a proposed rule to revise the overall format of prescription drug labeling. It will propose reordering the sections of the labeling, based on the importance of the information to practitioners, and the frequency with which practitioners refer to a section and creating a ''highlights'' section and an index.

FDA also is working on a proposed rule to revise the current requirements for the pregnancy subsection of labeling (see 62 FR 41061, July 31, 1997, announcing 21 CFR part 15 hearing to discuss the category requirements, and 64 FR 23340, April 30, 1999, announcing a public advisory committee meeting to discuss possible changes to pregnancy labeling).

In addition, FDA is developing guidance documents that focus on the content of certain labeling sections. The draft guidance on ''Content and Format of the Adverse Reactions Section of Labeling for Human Prescription Drugs and Biologics'' provides guidance on, among other things, criteria for including adverse reactions in labeling, presentation of adverse reactions in a table, and organization of the section. This section exists in the current labeling and is expected to continue to exist when the new format for prescription drug labeling is proposed.

At this time, FDA also is developing guidances for the Clinical Pharmacology, Clinical Studies, and Warnings/Precautions sections. The agency expects to publish these draft guidances for comment in the coming months. To date, the agency has focused its efforts on these sections because they typically contain large amounts of important and complex information and there have been significant variations in their format and content across different medical products. Guidances for other labeling sections may be developed later.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the content and format of the adverse reactions section of labeling for human prescription drugs and biologics. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15633 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1336]**

### Draft Guidance for Industry: Pediatric Oncology Studies in Response to a Written Request; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Pediatric Oncology Studies in Response to a Written Request.'' The draft guidance document provides assistance to applicants intending to respond to a written request from FDA for pediatric studies for a drug that may show potential health benefits in children with cancer. The draft guidance discusses the kind of information applicants should include in their pediatric studies, which, if responsive to a written request, may make the applicant's drug eligible to qualify for an additional 6 months of marketing exclusivity. This guidance is part of the agency's pediatric initiative to generate new knowledge to assist practitioners in the care of children with cancer and to help provide pediatric patients early access to emerging new drugs.

**DATES:** Submit written comments on the draft guidance to ensure their adequate consideration in preparation of the final document by September 18, 2000. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of ''Pediatric Oncology Studies in Response to a Written Request'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Manufacturers Assistance and Communications Staff (HFM–42), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 208521448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See the **SUPPLEMENTARY INFORMATION** section of this document for electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:**

Terrie L. Crescenzi, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, FAX 301–827–2520, e-mail: crescenzit@cder.fda.gov, or

Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0641, FAX 301–827–0644, e-mail: esber@cber.fda.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Pediatric Oncology Studies in Response to a Written Request.'' Section 111 of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act), signed into law by President Clinton on November 21, 1997, created section 505A of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355a), which permits certain marketing applications to obtain an additional 6 months of marketing exclusivity if the sponsor submits requested information

relating to the use of the drug in the pediatric population. The statute permits the agency to issue a written request for pediatric studies under section 505A(a) or (c) of the act. A written request is a specific document in which the agency requests submission of certain studies. The studies are designed to provide information on the health benefits of a drug in the pediatric population.

Because the study of oncology drugs in pediatric populations merits special consideration, the agency is publishing this guidance to assist sponsors who wish to undertake pediatric oncology studies.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on pediatric oncology studies. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

## II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/cder/pediatrics, and at http://www.fda.gov/cber/guidelines.htm.

Dated: June 14, 2000.

**Margaret M. Dotzel,**

*Associate Commissioner for Policy.*

[FR Doc. 00–15629 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 65 FR 12021–4 dated March 7, 2000).

This notice reflects the organizational and functional changes in the Northeast Field Cluster (RF1).

**Section RF–10 Organization**

The Northeast Field Cluster is headed up by the Field Director who reports directly to the Associate Administrator, Office of Field Operations. The Northeast Field Cluster is organized as follows:

A. Immediate Office of the Field Director (RF14)
B. Office of Data and Analysis (RF15)
C. Philadelphia Field Office (RF11)
D. Boston Field Office (RF12)
E. New York Field Office (RF13)

**Section RF;–20 Function**

*Immediate Office of the Field Director (RF14)*

Serves as HRSA's senior public health official in the Northeast cluster, providing liaison with State and local health officials as well as professional organizations; (2) provides input from local, regional and state perspectives to assist the Administrator and the Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the HRSA Associate Administrators and the Associate Administrator, Office of Field Operations, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (*e.g.,* Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with other Federal agencies, state and local health departments, schools of public health, primary care associations and organizations, community health centers, and others in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

**Office of Data and Analysis (RF15)**

Provides technical assistance, consultation, training to Field Cluster staff, grantees related to data systems, planning, and evaluation; (2) serves as focal point for States and Agency grantees on data and data systems issues related to HRSA program requirements; (3) develops statistical profiles of HRSA grantees in the region, and analysis of Geographic Information Systems profiles and other profiles developed by federal, state and local agencies in the region; (4) develops State profiles; (5) conducts and disseminates, as appropriate, trend analysis of financial data, health indicators, and service data to identify emerging trends among HRSA grantees and health service catchment areas in the Northeast; (6) provides consultation and support to private nonprofit organizations involved in health care delivery around special studies, research, and evaluation related to health disparities; (7) analyzes program related reports; and (8) maintains Field Cluster program related database.

*Philadelphia Field Office (RF11)*

Directs and coordinates field development and implementation of HRSA programs and activities in 5 states within the Northeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with

other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

*Boston Field Office (RF12)*

Directs and coordinates field development and implementation of programs and activities in six states within the Northeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

*New York Field Office (RF13)*

Directs and coordinates field development and implementation of programs and activities in two states, the Virgin Islands, and Puerto Rico within the Northeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

**Section RF–30 Delegations of Authority**

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon the date of signature.

Dated: May 26, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–15552 Filed 6–20–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at (65 FR 12021–4 dated March 7, 2000).

This notice reflects the organizational and functional changes in the Pacific West Field Cluster (RF5).

**Section RF—(10) Organization**

The Pacific West Cluster is headed up by the Field Director who reports directly to the Associate Administrator, Office of Field Operations. The Pacific West Cluster is organized as follows:

A. Immediate Office of the Field Director (RF53)
B. Office of Epidemiology and Data Analysis (RF54)
C. Division I (RF55)
D. Division II (RF56)
E. Division III (RF57)

**Section RF—(20) Function**

*Immediate Office of the Field Director (RF53)*

Serves as HRSA's senior public health official in the Pacific West cluster, providing liaison with State and local health officials as well as professional organizations; (2) provides input from local, regional and state perspectives to assist the Administrator and the Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the HRSA Associate Administrators and the Associate Administrator, Office of Field Operations, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (*e.g.,* Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with other Federal agencies, state and local health departments, schools of public health, primary care associations and organizations, community health

centers, and others in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

*Office of Epidemiology and Data Analysis (RF54)*

Provides technical assistance, consultation, training to Field Cluster staff, grantees related to data systems, planning, and evaluation; (2) serves as focal point for States and Agency grantees on data and data systems issues related to HRSA program requirements; (3) develops statistical profiles of HRSA grantees in the region, and analysis of Geographic Information Systems profiles and other profiles developed by federal, state and local agencies in the region; (4) develops State profiles; (5) conducts and disseminates, as appropriate, trend analysis of financial data, health indicators, and service data to identify emerging trends among HRSA grantees and health service catchment areas in the Pacific West Cluster; (6) provides consultation and support to private nonprofit organizations involved in health care delivery around special studies, research, and evaluation related to health disparities; (7) analyzes program related reports; and (8) maintains Field Cluster program related database.

*Division I (RF55)*

Directs and coordinates field development and implementation of HRSA programs and activities in four states within the Pacific West Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

*Division II (RF56)*

Directs and coordinates field development and implementation of programs and activities in the largest state within the Pacific West Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

*Division III (RF57)*

Directs and coordinates field development and implementation of programs and activities in three states and the U.S.—associated Pacific jurisdictions within the Pacific West Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; and (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

**Section RF—(30) Delegations of Authority**

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon the date of signature.

Dated: May 26, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–15553 Filed 6–20–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995; as last amended at 65 FR 12021–4 dated March 7, 2000). This notice reflects the organizational changes in the Office of Planning, Evaluation and Legislation (RA5).

I. In the Office of Planning, Evaluation and Legislation (RA5) amend the functional statement as follows:

*A. Immediate Office of the Director*

Serves as the Administrator's primary staff unit for coordinating the agency's strategic, evaluation and research planning processes; (2) oversees communication and maintains liaison between the Administrator, other OPDIVs, higher levels of the Department and other Departments on all matters involving analysis of program policy undertaken in the Agency; (3) prepares policy analysis papers and other planning documents as required in the Administration's strategic planning process; (4) analyzes budgetary data with regard to planning guidelines; (5) collaborates with Office of Management and Program Support in the development of budgets, performance plans, and performance reports required under the Government Performance and Results Act (GPRA); (6) coordinates activity related to the prevention agenda and Healthy People 2010 activities.

*B. Division of Planning and Evaluation (RA51)*

Serves as the Administrator's primary staff unit and principal source of advice on program planning and evaluation; (2) oversees communications between the Administrator and higher levels of the Department on all matters that involve program plans and evaluation of program performance; (3) maintains liaison with other Federal and non-Federal health agencies on matters within its areas of responsibility; (4) develops short-range goals, objectives and priorities for the Administrator; (5) coordinates interrelated bureau activities which influence programmatic planning; (6) develops in collaboration with financial management staff the short-range program and financial plan for the Administrator; (7) develops the Agency's annual evaluation plan; (8) manages evaluation funds, monitors progress of studies and disseminates results; (9) provides technical assistance to support the evaluation of policy and operations questions undertaken in the Agency.

*C. Division of Information and Analysis (RA52)*

Serves as the Administrator's primary staff unit and principal source of advice on program information and analysis; (2) oversees communications between the Administrator and higher levels of the Department on all matters that involve analysis of program policy; (3) maintains liaison with other Federal and non-federal health agencies on matters within its area of responsibility; (4) in conjunction with the Director of Planning and Evaluation, provides technical assistance to support the statistical, economic, cost benefit, and other scientific analyses of policy questions undertaken in the Agency; (5) supports development of long-range objectives and strategies; (6) identifies for the Administrator data required for use in the management and direction of Agency programs; (7) assesses and analyzes trends and makes forecasts about health services systems for use in the program management and decision making process; (8) monitors ongoing information systems which produce analytical data about the Agency's programs; (9) performs analyses of the impact of Agency programs on specific groups within the population, including minorities, and develops appropriate solutions to problems of illness and disease; and (10) coordinates the Administration's public use reports clearance function.

*D. Division of Legislation (RA53)*

Serves as the Administrator's primary staff unit and principal source of advice on legislative affairs; (2) oversees communications between the Administrator and higher levels of the Department on legislative matters; (3) oversees the legislative program for the Administrator; (4) develops a legislative program for the Agency and develops legislative proposals; (5) prepares the Administrator's analyses, position papers, and reports on proposed legislation; (6) supervises the preparation of testimony and backup materials on the Administration's legislative program for presentation to Congressional Committees; (7) monitors hearings and Congressional activities affecting the Administration; (8) in conjunction with the OAS(L), coordinates the preparation of information requested by and provides technical assistance to, Congressional Committees, Members of Congress, or their staffs in relation to the Agency's legislative programs; and (9) coordinates the distribution of legislative materials and serves as a legislative reference center.

**III. Delegation of Authority**

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegations.

This reorganization is effective upon date of signature.

Dated: June 12, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–15551 Filed 6–20–00; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Application for an Incidental Take Permit for Proposed Road Construction and Multi-Family Housing Development by the Litchfield Company, Georgetown County, South Carolina

**AGENCY:** Fish and Wildlife Service, Interior

**ACTION:** Notice.

**SUMMARY:** The Litchfield Company (Applicant) requests an incidental take permit (Permit) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The Applicant anticipates taking one breeding group of red-cockaded woodpeckers (*Picoides borealis*) (RCW) incidental to (1) construction activities for a multi-family housing development and (2) road building and usage during the RCW nesting season. The project site is about 3,600 feet west-northwest of the intersection of Highway 17 and Willbrook Boulevard at Litchfield Beach, Georgetown County, South Carolina. Foraging habitat will be impacted, but will not fall below recommended minimums as outlined in the Service's Guidelines for RCW Management on Private Lands. No cavity trees will be removed. However, construction activities (residential and road) and road usage within 400 feet of active cavity trees may harass the RCWs. A more detailed description of the mitigation and minimization measures to address the effects of the Project to

the protected species are outlined in the Applicant's Habitat Conservation Plan (Plan), and in the **SUPPLEMENTARY INFORMATION** section below. The Service has determined that the Applicant's proposal, including the proposed mitigation and minimization measures, will individually and cumulatively have a minor or negligible effect on the species covered in the Plan. Therefore, the Permit is a ''low effect'' project and would qualify as a categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of Interior Manual (516 DM2, Appendix 1 and 516 DM 6, Appendix 1).

The Service also announces the availability of the Plan and our determination of Categorical Exclusion for the incidental take application. Copies of the Plan and Service supporting documents may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice is provided pursuant to Section 10 of the Endangered Species Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the Federal action. Further, the Service specifically solicits information regarding the adequacy of the Plan as measured against the Service's Permit issuance criteria found in 50 CFR Parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to ''david_dell@fws.gov''. Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). 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 administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, 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.

Written comments on the permit application, supporting documentation, and Plan should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before July 21, 2000.

**ADDRESSES:** Persons wishing to review the application, Plan, and supporting documentation may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post Office Box 12559, Charleston, South Carolina 29422–2559. Written data or comments concerning the application, supporting documention, or Plan should be submitted to the Regional Office. Requests for the documentation must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE028745–0 in such comments, or in requests of the documents discussed herein.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313, facsimile: 404/679–7081; or Ms. Lori Duncan, Fish and Wildlife Biologist, Charleston Field Office, Charleston, South Carolina (see **ADDRESSES** above), telephone: 843/727–4707 ext. 21.

**SUPPLEMENTARY INFORMATION:** The RCW is a territorial, non-migratory cooperative breeding bird species. RCWs live in social units called groups which generally consist of a breeding pair, the current year's offspring, and one or more helpers (normally adult male offspring of the breeding pair from previous years). Groups maintain year-round territories near their roost and nest trees. The RCW is unique among the North American woodpeckers in that it is the only woodpecker that excavates its roost and nest cavities in living pine trees. Each group member has its own cavity, although there may be multiple cavities in a single pine tree. The aggregate of cavity trees is called a cluster. RCWs forage almost exclusively on pine trees and they generally prefer pines greater than 10 inches diameter at breast height. Foraging habitat is contiguous with the cluster. The number of acres required to supply adequate foraging habitat depends on the quantity and quality of the pine stems available. The RCW is endemic to the pine forests of the Southeastern United States and was once widely distributed across 16 States. The species evolved in a mature fire-maintained ecosystem. The RCW has declined primarily due to the conversion of mature pine forests to young pine plantations, agricultural fields, and residential and commercial developments, and to hardwood encroachment in existing pine forests due to fire suppression. The species is still widely distributed (presently occurs in 13 southeastern States), but remaining populations are highly fragmented and isolated. Presently, the largest known populations occur on federally owned lands such as military installations and national forests.

In South Carolina, there are an estimated 1,000 active RCW clusters; 50 percent are on Federal lands, 10 percent are on State lands, and 40 percent are on private lands (pers. com. S. Lohr, SCDNR).

There has not been a complete inventory of RCWs in South Carolina so it is difficult to precisely assess the species' overall status in the State. However, the known populations on public lands are regularly monitored and generally considered stable. While several new active RCW clusters have been discovered on private lands over the past few years, many previously documented RCW clusters have been lost. It is expected that the RCW population on private lands in South Carolina will continue to decline, especially those from small tracts isolated from other RCW populations.

An initial survey of the Applicant's property was conducted in May and June, 1997. It revealed 2 RCW clusters in the vicinity (cluster 3 and 4). Cluster 3 has a total of 22 cavity trees, 11 of which are on Willbrook Plantation, owned by the Applicant, 4 of these are active. The remaining Cluster 3 cavity trees are on adjacent property. All of the cavity trees for Cluster 4 are on adjacent property, but some foraging habitat responsibility lies with Applicant. The Applicant will also provide a small amount of foraging habitat for a third cluster north of Sandy Island Road. The breeding pair produced no offspring in 1998 and one male offspring in 1999. The nearest known RCWs are about 5

groups on the adjacent property to the north owned by Brookgreen Gardens. The next closest known active clusters are on Sandy Island (about 39 groups), about 2 miles northwest and on Prince George Plantation, about 2 miles south (mitigation site) (2 groups).

The Service worked with the Applicant in the design of the minimization and mitigation measures. To minimize impacts to the RCW from the proposed development, the Applicant will incorporate the following measures in the project:

1. The Applicant agrees to allow Fish and Wildlife Service and South Carolina Department of Natural Resources personnel to enter the property for general purposes.

2. The Applicant will conduct monitoring activities for a period of 5 years.

3. The Applicant will provide adequate foraging habitat for Cluster #3 (based on the Private Lands Guidelines) and a percentage of the foraging habitat for two additional clusters on adjacent property.

4. The Applicant will place restrictive covenants on property within the development to prevent the planting of hardwoods, and to maintain the landscape as RCW foraging habitat.

5. The Applicant will allow for the installation of artificial cavities in the common areas of the proposed development.

To mitigate for the groups to be taken, the applicant will do the following:

1. The Applicant will purchase credit for a breeding pair from Prince George Plantation. They have provisioned three recruitment clusters and implemented habitat improvement activities to increase their safe harbor baseline by one group.

The Service has therefore determined that approval of the Plan qualifies as a categorical exclusion under NEPA, as provided by the Department of the Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1). No further NEPA determination will therefore be prepared.

The Service will evaluate the Plan and comments submitted thereon to determine whether the application meets the requirements of Section 10(a) of the Act. If it is determined that those requirements are met, the Permit will be issued for the incidental take of RCWs on the applicant's project site. The Service will also evaluate whether the issuance of a section 10(a)(1)(B) Permit complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the Permit.

Dated: June 15, 2000.

**H. Dale Hall,**

*Acting Regional Director.*

[FR Doc. 00–15580 Filed 6–20–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Tribal-State Compact for Class III Gaming Between the Samish Indian Nation and the State of Washington, which was executed on April 18, 2000.

**DATES:** This action is effective June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: June 9, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–15563 Filed 6–20–00; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–030–1310–DB]**

### Continental Divide/Wamsutter II Natural Gas Project

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of the Record of Decision for the Continental Divide/Wamsutter II Natural Gas Project, Carbon and Sweetwater Counties, Wyoming.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Continental Divide/Wamsutter II (CD/WII) Natural Gas Project in Sweetwater and Carbon Counties, Wyoming. The BLM adopts the Proposed Action as outlined in the Final Environmental Impact Statement (Final EIS) completed for this project; however, the BLM has elected to reduce the total number of proposed natural gas wells and associated facilities. Development will be reduced from the proposed 3,000 well at 3,000 well locations to allow up to 2,130 wells at 2,130 well locations within the project area. Associated access roads, pipelines, and other ancillary facilities will be reduced as well. Allowance of the remaining 870 wells/well locations and associated facilities will be reconsidered pending completion of a planning review of the Great Divide Resource Area (GDRA) Resource Management Plan (RMP) for the Rawlins Field Office (RFO) area. The Proposed Action, as modified, is the BLM's environmentally preferred alternative.

**DATES:** This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 Code of Federal Regulations (CFR) 3165.4(c). If an appeal is filed, the notice of appeal must be filed with the BLM Wyoming State Director, 5353 Yellowstone Road, P.O. Box 1829, Cheyenne, Wyoming 82003, within 30 days of the date the notice of the decision appears in the **Federal Register**. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition pursuant to 43 CFR 3165.4(c) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed in 43 CFR 3165.4(c). Copies of the notice of appeal and petition for a stay must also be submitted to the Interior Board of Land Appeals and to the appropriate office of the Solicitor at the same time the original documents are filed with BLM Wyoming State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**FOR FURTHER INFORMATION CONTACT:** Contact either Clare Miller, BLM, Rawlins Field Office, at 307–328–4245; or Teri Deakins, BLM, Rock Springs Field Office, at 307–352–0211; or Tom Enright, BLM, Wyoming State Office, at

307–775–6329. Copies of the EIS and ROD are available from the BLM at the following locations: Rawlins Field Office, P.O. Box 2407, 1300 North Third Street, Rawlins, Wyoming, 82301; Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901; the Wyoming State Office, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming, 82009; and on the Wyoming NEPA documents Web Site at www.wy.blm.gov./nepa/nfdocs.html.

**SUPPLEMENTARY INFORMATION:** In accordance with Section 102 of the National Environmental Policy Act (NEPA), as amended, a Final EIS addressing a natural gas development project in Sweetwater and Carbon Counties, Wyoming, was issued by the BLM in December 1999. The Final EIS addressed the potential impacts of exploration and development of up to 3,000 natural gas wells and associated facilities. The BLM decision is to approve the Operators' development plan as described in the Proposed Action of the CD/WII Final Environmental Impact Statement (EIS) with the following modifications. Development will be reduced from the proposed 3,000 wells at 3,000 well locations to allow up to 2,130 wells at 2,130 well locations within the project area along with associated access roads, pipelines, a gas processing facility, and associated ancillary facilities. Allowance of the remaining 870 wells/well locations (not more than 435 wells or well locations on Federal lands, and/or Federal mineral estate) with associated facilities will be considered pending completion of a planning review of the Great Divide Resource Area Resource Management Plan for the Rawlins Field Office area.

This ROD will allow approximately 930 new wells/well locations within the jurisdictional boundary of the Rock Springs Field Office (RSFO) area (not more than 465 wells or well locations on Federal lands and/or Federal mineral estate) and will allow 1,200 new wells/well locations within the jurisdictional boundary of the Rawlins Field Office (RFO) area (not more than 600 wells or well locations on Federal lands, and/or Federal mineral estate) for a total of 2,130 well locations. This is assuming 50 percent of the wells will be drilled on Federal lands and/or mineral estate. Should private/State land development trends exceed 50 percent of the wells, the number of wells permitted on Federal estate will be limited accordingly. The total amount of new roads and new pipelines, and the number of ancillary facilities will be reduced to accommodate the number of wells drilled. This will include approximately 1,100 miles of access road, 1,100 miles of pipeline, 3–4 compressor stations, 3–4 water disposal wells, 7 water evaporation facilities, 36 water wells, and 1 gas processing facility.

Approval of the Proposed Action, as modified, provides for managing the CD/WII project area in accordance with the Federal Land Policy and Management Act (FLPMA) (Sec. 202(e)), in a manner that allows for natural gas development while continuing to provide for the existing principal and major uses recognized by the land use plans (*i.e.* domestic livestock grazing, wildlife development and utilization, mineral exploration and production, and outdoor recreation) for this area. The Proposed Action, as modified, sustains the long-term availability of other resources while promoting stability of local and regional economies, environmental integrity, and conservation of resources for future generations. The approved action, as modified, will also provide for complete conformance with BLM RMPs for both the RSFO and the RFO areas. Reducing the number of wells and associated facilities to be developed within the jurisdictional boundary of the RFO area will help ensure the project will comply with the current reasonably foreseeable oil and gas development scenarios projected in the GDRA RMP and the planning decisions these projections may have influenced. Furthermore, the reduction in the allowable wells and the associated development for this project provides an opportunity for other oil and gas activity to occur outside the project area while a review of the existing GDRA RMP is being completed. The decision is consistent with all Federal, State, and county authorizing actions required to implement the project and with National policy. More detailed rationale and justification for the decision to select the Proposed Action with modifications are outlined in the ROD.

Dated: June 14, 2000.

**Alan R. Pierson,**

*State Director.*

[FR Doc. 00–15581 Filed 6–20–00; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY070–00–1310–EJ]**

### Notice of Intent To Prepare an Environmental Impact Statement

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent to prepare an environmental impact statement for oil and gas development in the Powder River Basin, Wyoming, in Campbell, Sheridan, Johnson and the northern portion of Converse Counties.

**SUMMARY:** The Bureau of Land Management (BLM) under the National Environmental Policy Act (NEPA) must analyze the impacts of actions we permit on Federal lands and minerals. As part of this analysis, the cumulative affects of the proposed action and other activities occurring in the area must be considered. Two Environmental Assessments (EAs) (Gillette North, and Lower Prairie Dog Creek) and two Environmental Impact Statements (EISs) (Gillette South and WYODAK) to address proposed coalbed methane (CBM) development have been completed in the area. A third EA, the WYODAK drainage EA, is currently underway. When the WYODAK EIS was completed in November of 1999, it became apparent there was a demand to drill additional wells above the 5,890 analyzed.

Part of the new analysis will be to determine if the Buffalo Resource Management Plan needs to be updated in order to support continued development.

Our recent reasonable foreseeable development scenario indicates we could see an additional 30,000 CBM wells and 3,000 oil wells or more in the Powder River Basin between now and the year 2010 if development success continues as it has been. These numbers include development on all ownerships.

**DATES:** Comments to be considered in the draft EIS should be submitted by June 30, 2000. The draft EIS should be available for public review by April 15, of 2001.

**ADDRESSES:** Questions or concerns should be addressed to Paul Beels in the BLM Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834.

**FOR FURTHER INFORMATION CONTACT:** Paul Beels, phone 307–684–1100.

**SUPPLEMENTARY INFORMATION:** The following are some of the major issues raised during the preparation of the WYODAK CBM EIS and in addition, comments received for the WYODAK

drainage EA. These issues are provided to help you understand what has occurred in past environmental documents and perhaps stimulate additional thoughts, questions, and issues.

- People were concerned with the loss of hydraulic head related to groundwater associated with the coal seam. Concerns related to lowering of water levels and increased pumping costs because water would have to be pumped from greater depths.
- Questions were posed on what effects the coalbed methane development would have on air quality. Of concern were possible hazardous emissions and pollutants released as a result of compressor emissions.
- Disposing water on the surface raised concerns about water quality due to possible increased erosion and effects on irrigated lands.
- There were concerns about potential for increased weed infestations.
- There were concerns about long-term affects resulting from depletion of groundwater.
- Concerns were raised regarding impacts to threatened and endangered species, grouse, and raptors.
- Gas venting from recently drilled wells was a concern.
- Noise from operation of compressors was a concern.
- Concern was expressed about the effects of surface disposal of water and operating a ranch with ongoing methane development operations.

Public scoping meetings will be held on June 6, 2000, at 7 p.m. at the Holiday Inn in Sheridan, Wyoming; June 7, 2000, at 7 p.m. at Colonel Bozeman's in Buffalo, Wyoming; June 8, 2000, at 7 p.m. at the Thunder Basin Hotel in Gillette, Wyoming; and June 12, 2000, at 7 p.m. at the Best Western in Douglas, Wyoming. The purpose of the meetings is to solicit comments regarding the proposal and answer questions about issues or concerns you may have. We will use the feedback in the preparation of the EIS.

Dated: June 14, 2000.

**Alan R. Pierson,**

*State Director.*

[FR Doc. 00–15582 Filed 6–20–00; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–930–1430–01; N–56474]**

### Notice of Realty Action; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following described land in Elko County, Nevada has been examined and found suitable for classification for lease/purchase under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this Notice in the **Federal Register**.

**Mount Diablo Meridian, Nevada**

T. 34 N., R. 55 E.

Section 2, Lots 1–2, S½, S½NE¼.

Containing 164.09 acres, more or less.

**DATES:** The land will become segregated on June 21, 2000. Comments are due in this office by August 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this action is available for review at the Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada.

**SUPPLEMENTARY INFORMATION:** Elko County School District intends to use the land for a transportation facility and school complex. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States.

1. A right-of-way thereof for ditches and canals constructed by the authority of the United States; Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable laws and regulations to be established by the Secretary of the Interior.

The lease/patent will be subject to all prior and existing rights.

The land is not required for any Federal purpose. The classification and subsequent lease/conveyance are consistent with the Bureau's planning for the area and would be in the public interest.

Upon publication of this Notice of Realty Action in the **Federal Register**, the subject lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except for recreation and public purposes and leasing under the mineral leasing laws. The segregative effect shall terminate upon issuance of a patent or as specified in an opening order to be published in the **Federal Register**, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Elko Field Office, 3900 Idaho Street, Elko, NV 89801. Any objections will be evaluated by the State Director, who may sustain, vacate or modify this realty action. In the absence of timely filed objections, the classification of the lands described in this Notice will become effect 60 days from the date of publication in the **Federal Register**.

*Classification Comments:* Interested parties may submit comments involving the suitability of the land for lease/conveyance under the Recreation and Public Purposed Act. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

*Application Comments:* Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a county transportation facility and school complex.

Dated: June 7, 2000.

**David L. Stout,**

*Associate Field Manager.*

[FR Doc. 00–15610 Filed 6–20–00; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–030–2000–1060–JJ]**

### Notice of Intent to Remove Stray Wild Horses

**SUMMARY:** The Wild, Free Roaming Horse and Burro Act (Pub. L. 92–95) requires that, among other things, horses that exceed the Appropriate Management Levels (AMLs) established for them or stray from designated Herd Management Areas (HMAs) be removed. In order to accomplish that, the Rawlins and Lander Field Offices of the Bureau

of Land Management plan to remove 500–600 excess and stray horses from three contiguous areas of the Rawlins and Lander Field Offices known as the Lost Creek HMA, an area designated as I–80 North, and the Antelope Hills HMA. The horses in I–80 North have strayed from the nearby Stewart Creek and Lost Creek HMAs over a period of time. The area known as I–80 North contains a large (greater than 50%) percentage of private land. The removal is scheduled to begin after September 30, 2000, and conclude prior to January 1, 2001. The Appropriate Management Level for these three contiguous areas is 140. At least 140 horses will remain in the area after the removal is completed.

Wild Horse populations in the nearby Stewart Creek, Green Mountain, and Crooks Mountain HMAs will not be directly affected by this removal and will remain above the AMLs established for them.

Numbers presented are approximate and will be finalized by a supplemental census to be conducted during August/September 2000 in the removal area and other, nearby HMAs.

A detailed Gather Plan, Environmental Analysis (EA), and Record of Decision for this removal are available on request from: Chuck Reed, Resource Advisor, P.O. Box 2047, Rawlins, Wyoming 82301; (307) 328–4213; or email: Chuck_Reed@blm.gov.

These documents are also available for review on the Wyoming BLM homepage at www.wy.blm.gov.

This removal action represents continued implementation of decisions previously communicated through Decision Records WY–037–EA4–121/122, dated July 11, 1994; WY–030–EA0–038 dated January 10, 2000; and WY–030–EA0–037 dated February 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** For further information please contact the Bureau of Land Management, Rawlins Field Office, 1300 North Third Street, P.O. Box 2407, Rawlins, WY 82301, (307) 328–4200.

**Kurt J. Kotter,**

*Field Manager.*

[FR Doc. 00–15609 Filed 6–20–00; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF JUSTICE

### Notice of Public Meeting Concerning Heavy Duty Diesel Engine Consent Decrees

The Department of Justice and the Environmental Protection Agency announce a public meeting to be held on June 29, 2000 at 10:00 a.m. at 1425 New York Ave., NW., 13th Floor Conference Room, Washington, DC. The subject of the meeting will be implementation of the provisions of seven consent decrees signed by the United States and diesel engine manufacturers and entered by the United States District Court for the District of Columbia on July 1, 1999. In supporting entry by the Court of the decrees, the United States committed to meet with states, industry groups, environmental groups, and concerned citizens to discuss consent decree implementation issues. This will be the fourth of a series of public meetings to be held quarterly during the first year of implementation of the consent decrees and at least annually thereafter. Future meetings will be announced in the **Federal Register** and/or on EPA's Diesel Engine Settlement web page at: www.epa.gov/oeca/ore/aed/diesel.

For further information, please contact: Anne Wick, EPA Diesel Engine Consent Decree Coordinator, U.S. Environmental Protection Agency (Mail Code 2242A), EPA Headquarters, Washington, DC 20460, e-mail: WICK.ANNE@EPA.GOV.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–15590 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Consent Judgments Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed Consent Decree in *United States* v. *Bemis Company, Inc. and Pervel Industries, Inc.,* DOJ# 90–11–2–307B, Civ. No. 3:96–CV–02420 (AVC), was lodged in the United States District Court for the District of Connecticut on June 2, 2000. The Consent Decree resolves claims of the United States against Pervel Industries, Inc. and Bemis Company concerning enforcement of a February 1990 consent decree (*United States* v. *Yaworski, Inc. et al.,* Civ. Act. No. N–89–615 (JAC) (D. Conn.)) relating to the Yaworski Lagoon Superfund Site located in Canterbury Township, Windham County, Connecticut (''Site''). Additionally, the Consent Decree resolves related claims for cost recovery under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607(a), under the Federal Debt Collection Procedures Act, 28 U.S.C. 3001, *et seq.,* and under the Federal Priority Statute, 31 U.S.C. 3701 *et seq*.

Under the proposed Consent Decree, Bemis and Pervel agree to reimburse the United States' response costs in the amount of $3 million, plus interest, which sum will be placed by EPA in a special site account for use at the Site. Additionally, Bemis and Pervel agree to pay jointly the sum of $40,000 to the Department of Interior (''DOI'') to resolve its potential claims for natural resource damages at the Site. In return, the United States covenants not to sue Settling Defendants for response costs incurred at the Site, for obligations under the 1990 consent decree, for natural resource damages under the trusteeship of DOI and the National Oceanic and Atmospheric Administration, and for other claims set forth in the complaint in this action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Bemis Company, Inc. and Pervel Industries, Inc.,* DOJ# 90–11–2–307B. The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Connecticut, Room 328, 450 Main Street, Hartford, Conn. 06103; and at the Region II Office of the U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10278. Copies of the Consent Decree may be obtained by mail from the Justice Department Consent Decree Library, P.O. Box 7611 Ben Franklin Station, Washington, DC 20044, (202) 514–1547. In requesting a copy, please enclose a check in the amount of $6.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

**Joel M. Gross,**

*Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–15593 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in

*United States* v. *Cotter Corporation,* C.A. No. 00–WM–1076 (D. Col.), was lodged on May 25, 2000, with the United States District Court for the District of Colorado. The consent decree resolves the United States' claims against the Cotter Corporation with respect to past response costs incurred, pursuant to section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, in connection with the clean-up of the Lincoln Park Site. The Site is located near Canon City, Fremont, Colorado. Under the consent decree, defendant Cotter Corporation will pay the United States $52,500 in reimbursement of past response costs incurred in connection with the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cotter Corporation,* DOJ Reference No. 90–11–3–305–A.

The proposed consent decree may be examined at the Office of the United States Attorney, 1961 Stout Street, Suite 1200, Denver, Colorado; and the Region VIII Office of the Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado. A copy of the proposed decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $5.25 (.25 cents per page production costs), payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–15592 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Sections 309(b) and 311(b) of the Clean Water Act

Notice is hereby given that on June 8, 2000 a proposed Consent Decree (''Decree'') in *United States* v. *Southern Pacific Transportation Co. et al.,* Civil Action No. 97–WM–469 (D. Colo.), was lodged with the United States District Court for the District of Colorado. The United States filed this action pursuant to sections 309(b) and 311(b) of the Clean Water Act (the ''Act''), 33 U.S.C. 1319(b) and 1321(b), for civil penalties and injunctive relief for violations of Sections 301(a)/402(a) and 311(b) of the Act, 33 U.S.C. 1311(a)/1342(a) & 1321(b), arising from eight separate incidents in Colorado and Utah. All but one of the incidents were associated with freight train wrecks. The violations concern spills of diesel fuel from ruptured or leaking locomotive fuel tanks. Two of the eight incidents also involved a spill of an additional pollutant (taconite) or hazardous substance (sulfuric acid) from hoppers/tank cars.

As part of the settlement UP will pay a civil penalty in the amount of $800,000. In addition, UP will undertake injunctive relief which includes: (a) A requirement that all freight locomotives UP purchases during the next five years be equipped with fuel tanks meeting a new industry standard for crash-worthiness; (b) implementation of a comprehensive rock fall equipped with fuel tanks meeting a new industry standard for crash-worthiness; (c) implementation of a comprehensive rock fall hazard mitigation project; (d) installation of locomotive fuel tank patch kits on hi-rail vehicles and training the operators of such vehicles; (e) preparation of emergency response contingency plans for the Colorado River in Colorado and Utah, the Gunnison River in Colorado, and the Spanish For River in Utah along which UP's track is aligned; and (e) other relief.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to, *United States* v. *Southern Pacific Transportation Company et al.,* Civil Action No. 97–WM–469 (D. Colo.) and D.J. Ref. #90–5–1–1–4381.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 18th Street, North Tower Suite 945, Denver, Colorado, 80202. A copy of the Decree may also be obtained by mail from the Department of Justice Consent Decree Library, 13th Floor, 1425 New York Avenue, NW, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $15.50 for the Decree (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. 00–15589 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Final Judgment and Competitive Impact Statement; United States v. Alcoa Inc., et al.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Hold Separate Stipulation and Order, and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *Alcoa Inc., et al.,* Civil No. 00–CV–954 (RMU). On May 3, 2000, the United States filed a Complaint alleging that the proposed acquisition of Reynolds Metals Company by Alcoa Inc. would substantially lessen competition in the manufacture and sale of smelter grade alumina (''SGA'') worldwide and chemical grade alumina (''CGA'') in North America in violation of section 7 of the Clayton Act, 15 U.S.C. 18.

The proposed Final Judgment orders Alcoa and Reynolds to sell Reynolds' controlling interest in an alumina refinery in Worsley, Western Australia, and Reynolds' alumina refinery located near Corpus Christi, Texas. Public comment is invited within the statutory sixty-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Roger W. Fones, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, 325 Seventh Street, NW, Suite 500, Washington, DC 20530 (telephone: (202) 307–6351).

Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, and Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained

upon request and payment of a copying fee.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

**Hold Separate Stipulation and Order**

It is hereby stipulated by and between the undersigned parties, subject to approval and entry by the Court, that:

*I. Definitions*

As used in this Hold Separate Stipulation and Order:

A. ''Alcoa'' means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

B. ''Reynolds'' means defendant Reynolds Metals Company, a Delaware corporation with its headquarters in Richmond, Virginia, its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships, joint ventures, directors, officers, managers, agents, and employees.

C. ''Hold Separate Assets'' means the Corpus Christi Assets and the Worsley Interest required to be divested under the proposed Final Judgment, as defined in Sections II.C and II.G of the proposed Final Judgment, collectively.

D. The terms ''Chemical Grade Alumina'' or ''CGA'' have the meaning defined in Section II.B of proposed Final Judgment.

E. The terms ''Smelter Grade Alumina'' or ''SGA'' have the meaning defined in Section II.F of proposed Final Judgment.

*II. Objectives*

The Final Judgment filed in this case is meant to ensure defendants' prompt divestiture of certain assets for the purpose of maintaining a viable competitor in the manufacture and sale of Smelter Grade Alumina (''SGA'') and Chemical Grade Alumina (''CGA'') to remedy the effects that the United States alleges would otherwise result from Alcoa's proposed acquisition of Reynolds. This Hold Separate Stipulation and Order ensures that, prior to such divestitures, the Hold Separate Assets be maintained and operated as independent, economically viable, ongoing business concerns, and that competition is maintained during the pendency of the divestiture.

*III. Jurisdiction and Venue*

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

*IV. Compliance With and Entry of Final Judgment*

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

B. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

C. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

D. In the event the United States has withdrawn its consent, as provided in paragraph IV.A above, or if the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, or if the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continuing compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

E. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

*V. Hold Separate Provisions*

Until the divestiture required by the Final Judgment has been accomplished:

A. Alcoa shall preserve, maintain, and operate the Hold Separate Assets as independent competitors, with management, research, development, production, sales, and operations held entirely separate, distinct, and apart from those of Alcoa. Alcoa shall not coordinate the manufacture, marketing, or sale of any products with that of any of the Hold Separate Assets that Alcoa will own as a result of the acquisition of Reynolds. To the extent that the Hold Separate Assets are supplying or have current plans to supply Reynolds' smelters with SGA, Alcoa may continue to receive such supply in comparable volumes. Within twenty calendar days of the filing of the Complaint in this matter, Alcoa will inform the United States of the steps taken to comply with this provision.

B. Alcoa shall take all steps necessary to ensure that the Hold Separate Assets will be maintained and operated as independent, ongoing, economically viable, and active competitors in the manufacture and sale of SGA and CGA, that the management of the Hold Separate Assets will not be influenced by Alcoa, and that the books, records, competitively sensitive sales, marketing, and pricing information, and decision-making associated with the Hold Separate Assets will be kept separate and apart from the operation of Alcoa. Alcoa's influence over the Hold Separate Assets shall be limited to that necessary to carry out Alcoa's obligations under this Hold Separate Stipulation and Order and the Final Judgment. Alcoa may receive historical aggregate financial information (excluding capacity or pricing information) relating to the Hold Separate Assets to the extent necessary to allow Alcoa to prepare financial reports, tax returns, personnel reports, and other necessary or legally required reports.

C. Alcoa shall use all reasonable efforts to maintain manufacturing at the Hold Separate Assets, and shall maintain at current or previously approved levels, whichever are higher, internal research and development funding, promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Hold Separate Assets.

D. Alcoa shall provide and maintain sufficient working capital to maintain the Hold Separate Assets as economically viable, ongoing businesses.

E. Alcoa shall provide and maintain sufficient lines and sources of credit to maintain the Hold Separate Assets as economically viable, ongoing businesses.

F. Alcoa shall take all steps necessary to ensure that the Hold Separate Assets are fully maintained in operable condition at no lower than their current rated capacity plus, at the time such expansions are scheduled to be completed, all future expansions in rated capacity, and shall maintain and adhere to normal repair and maintenance schedules for the Hold Separate Assets.

G. Alcoa shall not, except as part of a divestiture approved by plaintiff, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of or pledge as collateral for loans, any assets of the Hold Separate Assets.

H. Alcoa shall maintain, in accordance with sound accounting principles, separate, true, accurate and complete financial ledgers, books, and records that report, on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, income, profit, and loss of the Hold Separate Assets.

I. Until such times as the Hold Separate Assets are divested, except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Alcoa shall not hire, and defendants shall not transfer or terminate, or alter, to the detriment of any employee, any current employment or salary agreements for any employee who, on the date of the signing of this Hold Separate Stipulation and Order by the parties, works for Reynolds and whose primary responsibilities relates to the Hold Separate Assets.

J. Alcoa shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestiture pursuant to the Final Judgment to a suitable purchaser.

K. This Hold Separate Stipulation and Order remain in effect until the divestitures required by the Final Judgment are compete, or until further Order of the Court.

Respectfully submitted,

Dated: May 3, 2000.

For Plaintiff United States: Allee A. Ramadhan, D.C. Bar #162131. Bruce Pearson, Connecticut Bar #372598. Janet R. Urban, Mark S. Hegedus, D.C. Bar #435525. Andrew K. Rosa, Hawaii Bar #6366. Michelle J. Livingston, D.C. Bar #461268. Attorneys, U.S. Department of Justice, Antitrust Division, 325 7th Street, N.W. Suite 500, Washington, D.C. 20530 (202) 307–6470.

For Defendant Alcoa Inc.: Mark Leddy, D.C. Bar #404833. David I. Gelfand, D.C. Bar #416596. Steven J. Kaiser, D.C. Bar #454251. Patricia M. McDermott, D.C. Bar #429776. Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006–1801, (202) 974–1570.

For Defendant Reynolds Metals Company: Michael H. Byowitz, D.C. Bar #214703. Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019–6150, (212) 403–1268.

Order

It is so ordered, this _____ day of _____, 2000.

United States District Judge

**Final Judgment**

Whereas, Plaintiff, the United States of America (''United States''), filed its complaint in this action on May 3, 2000, and Plaintiff and Defendants Alcoa Inc. (''Alcoa'') and Reynolds Metals Company (''Reynolds''), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law of fact herein;

And whereas, Defendants have agreed to be bound by the provisions of this Final Judgment and the provisions of the Hold Separate Stipulation and Order pending their approval by the Court;

And whereas, the essence of the Final Judgment is the prompt and certain divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, Plaintiff requires Defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And whereas, Defendants have represented to the Plaintiff that the divestitures ordered herein can and will be made and that Defendants will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

*I. Jurisdiction*

This Court has jurisdiction over the subject matter of this action and over each of the parties hereto. The Complaint states a claim upon which relief may be granted against the Defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. § 18).

*II. Definitions*

As used in this Final Judgment:

A. ''Alcoa'' means defendant Alcoa Inc., a Pennsylvania corporation with its headquarters in Pittsburgh, Pennsylvania, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

B. ''Chemical Grade Alumina'' or ''CGA'' means the alumina product resulting from the refining of bauxite ore in alumina refineries, except that the alumina is removed from the production stream prior to calcining in kilns used to produce SGA. This uncalcined alumina is known as Chemical Grade Alumina or CGA, and is sold as ''wetcake'' or is dried and sold as ''dry hydrate.'' CGA is used in numerous downstream products.

C. ''Corpus Christi Assets'' means all assets, interests and rights owned by Reynolds at Reynolds' alumina refinery located near Corpus Christi, Texas, which are used or held for use for alumina refining (the ''Corpus Christi Refinery'', a/k/a the ''Sherwin Refinery''), including:

1. All tangible assets, including the alumina refining facility located at the Corpus Christi Refinery and the real property on which the Corpus Christi Refinery is situated; the real property to which the Corpus Christi Refinery is adjacent and that is reasonably necessary to the refining and sale of SGA or CGA from the Corpus Christi Refinery; refining assets relating to the Corpus Christi Refinery, including capital equipment, vehicles, supplies, personal property, inventory, office furniture, fixed assets and fixtures, materials, on-site warehouses or storage facilities, railcars, port facilities, ships, boats, barges and other tangible property or improvements; all licenses, permits and authorizations issued by an governmental organization relating to the Corpus Christi Refinery; all contracts, agreements, leases, commitments and understandings pertaining to the operations of the Corpus Christi Refinery; all supply agreements relating to the Corpus Christi Refinery, including, at the purchaser's option, all agreements,

commitments and understandings for the supply of bauxite to the Corpus Christi Refinery; all customer lists, accounts, and credit records; and other records maintained by Reynolds in connection with the operations of the Corpus Christi Refinery.

2. All intangible assets, including but not limited to all patents, licenses and sublicenses, trademarks, trade names, service marks, service names (except to the extent such trademarks, trade names, service marks and service names contain the trademark Reynolds and Knight, Horse and Dragon Design; or the names ''Reynolds,'' ''Reynolds Metals Company,'' ''Reynolds, Rey, Reyno, or a Knight, Horse and Dragon Design); intellectual property, technical information, know-how, trade secrets, drawings, blueprints, designs, design protocols; specifications for materials, specifications for parts and devices, safety procedures for the handling of materials and substances; quality assurance and control procedures; design tools and simulation capability; all research data concerning historic and current research and development efforts relating to the operations of the Corpus Christi Refinery, including design of experiments and the results of unsuccessful designs and experiments; all plans pertaining to output and production of the Corpus Christi Refinery; and all manuals and technical information Reynolds provides to its employees, customers, suppliers, agents or licensees in connection with the operations of the Corpus Christi Refinery.

D. ''Divestiture Assets'' means the Worsley Interest and the Corpus Christi Assets.

E. ''Reynolds'' means defendant Reynolds Metals Company, a Delaware corporation with its headquarters in Richmond, Virginia, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

F. ''Smelter Grade Alumina'' or ''SGA'' means the alumina product resulting from the refining and calcining of bauxite ore in alumina refineries that is smelted to make aluminum metal.

G. ''Worsley Interest'' means all Reynolds' interest in the Worsley Joint Venture, established by agreement dated February 7, 1980, and subsequently amended; provided, however, that the Worsley Interest does not include the trademarks Reynolds and Knight, Horse and Dragon Design; or the names ''Reynolds,'' ''Reynolds Metals Company,'' ''Reynolds Aluminum'' or any variation thereof, or any trademark containing Reynolds, Rey, Reyno, or a Knight, Horse, and Dragon Design.

*III. Applicability*

A. The provisions of this Final Judgment apply to Alcoa and Reynolds, as defined above, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of the Divestiture Assets, that the acquiring party or parties agree to be bound by the provisions of this Final Judgment.

*IV. Divestiture of Assets*

A. Defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, within two hundred seventy (270) days from either the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Worsley Interest as an interest in a viable, ongoing business. Defendants are further ordered and directed in accordance with the terms of this Final Judgment, within one hundred eighty (180) days from either the filing of the Complaint in this matter or five (5) days after notice of entry of this Final Judgment by the Court, whichever is later, to divest the Corpus Christi Assets as a viable, ongoing business, to a purchaser or purchasers acceptable to the United States in its sole discretion.

B. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, may extend the time period for any divestiture by an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Defendants promptly shall make known, by usual and customary means, the availability of the Divestiture Assets described in this Final Judgment. Defendants shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the Plaintiff at the same time that such information is made available to any other person.

D. Defendants shall permit prospective purchasers of the Divestiture Assets to have reasonable access to personnel and to make inspection of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information relating to the Divestiture Assets; and access to any and all financial, operational, or other documents and information relating to the Divestiture Assets customarily provided as part of a due diligence process, subject to customary confidentiality assurances.

E. Defendants shall provide to any purchaser or purchasers of the Divestiture Assets information relating to the Reynolds personnel involved in the refining and sale of SGA and/or CGA in connection with the Worsley Interest and the Corpus Christi Assets to enable the purchaser or purchasers to make offers of employment. Defendants shall not interfere with any negotiations by any purchaser or purchasers to employ and Reynolds employee who works at the Worsley refinery or the Corpus Christi Refinery, or whose principal responsibility involves the refining and sale of alumina at the Worsley refinery or the Corpus Christi Refinery.

F. Defendants shall warrant to the purchaser or purchasers of the Divestiture Assets that the Divestiture Assets will be operational on the date of the divestiture.

G. Defendants shall warrant to the purchaser of the Divestiture Assets that all necessary environmental, zoning, export and other permits relating to the Divestiture Assets are in order in all material respects. Defendants will not undertake, directly or indirectly, following the divestiture of the Divestiture Assets, any challenges to the environmental, zoning, export or other permits pertaining to the operation of the Divestiture Assets.

H. Defendants shall not take any action, direct or indirect, that will impede in any way the operation of the Divestiture Assets.

I. Unless the United States otherwise consents in writing, the divestiture undertaken pursuant to Section IV or undertaken by a trustee appointed pursuant to Section V of this Final Judgment shall include all of the Divestiture Assets. Prior to divestiture, the Divestiture Assets that are the subject of the Hold Separate Stipulation and Order shall be operated pursuant to such Hold Separate Stipulation and

Order entered by the Court. The divestitures shall be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the refining and sale of SGA or CGA. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers with respect to whom it is demonstrated to the United States' sole satisfaction that (a) the purchasers have the intent to compete effectively in the refining and sale of SGA or CGA; and (b) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the refining and sale of SGA or CGA. In addition, none of the terms of any agreement between the purchaser or purchasers and Defendants, including any joint venture, governance, operation or shareholder agreements, shall give Defendants the ability to limit the purchaser's capacity or output, to raise a purchaser's costs, to lower a purchaser's efficiency, or otherwise to interfere in the ability of the purchaser or purchasers to compete effectively.

J. In connection with the divestiture of the Corpus Christi Assets and the Worsley Interest, whether pursuant to Section IV of the Final Judgment or by a trustee appointed pursuant to Section V, Defendants may negotiate a transitional supply agreement or agreements with the purchaser or purchasers of these divested assets for the supply of SGA to Reynolds' smelters previously supplied by these refineries. Any such agreement shall be on commercially reasonable terms and may have a term of up to three (3) years. Volume requirements during the first year of any such agreement may be up to 100% of the annual volumes supplied by these refineries to such smelters during the year prior to the closing of the merger transaction, up to 75% during the second year and you to 50% during the third year.

K. In connection with the divestiture of the Worsley Interest, whether pursuant to Section IV of this Final Judgment or by a trustee pursuant to Section V, Defendants shall assign to the purchaser or purchasers of the Worsley Interest Reynolds' existing contractual obligations to supply SGA to Billiton. If Alcoa is unable to obtain any necessary consent of Billiton or is otherwise unable to effect such an assignment, Alcoa shall enter into an agreement with the purchaser or purchasers of the Worsley Interest for the supply of such amount of SGA and on such terms as are called for by the Reynolds/Billiton SGA contract, to be resold by Alcoa to Billiton in fulfillment of that contract.

L. In connection with the divestiture of the Corpus Christi Assets, whether pursuant to Section V, Defendants shall offer the purchaser a contract for a term of at least two (2) years for the supply of bauxite from Reynolds' interest in ABC (Aroaima) Guyana. Such agreement shall be on commercially reasonable terms and for annual volumes substantially similar to the annual volumes supplied by ABC (Aroaima) Guyana to the Corpus Christi Refinery during the year prior to the closing of the transaction.

*V. Appointment of Trustee*

A. In the event that Defendants have not divested any of the Divestiture Assets within the time period specified for that asset in Section IV.A of this Final Judgment and for which the time period has not been extended pursuant to Section IV.B, the Court shall appoint, on application of the United States, a trustee selected by the United States and approved by the Court to effect the divestiture of that Divestiture Asset.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to divest the Divestiture Assets. The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States in its sole discretion. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to Plaintiff and the trustee within ten (10) days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Plaintiff approves, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants and the trust shall then be terminated. The compensation of such trustee and of professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished, but timeliness is paramount.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including their best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment. Defendants shall take no action to interfere with or to impede the trustee's accomplishment of the divestitures.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment; provided however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The

trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such report contains information that the trustee deems confidential, such report shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the Plaintiff, the Court and to Defendants. Plaintiff and Defendants shall each have the right to be heard and to make additional recommendations consistent with the purpose of this Final Judgment. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

*VI. Notification*

A. Within two (2) business days following execution of a definitive agreement Defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify Plaintiff of the proposed divestitures. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same.

B. Within fifteen (15) calendar days of receipt by Plaintiff of such notice, the United States, in its sole discretion, may request from Defendants, the trustee, the proposed purchaser or purchasers, or any other third party additional information concerning the proposed divestitures, the proposed purchasers, and any other potential purchaser. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the Plaintiff has been provided the additional information requested from Defendants, the trustee, proposed purchaser or purchasers, or any third party, whichever is later, the United States shall provide written notice to Defendants and the trustees, if there is one, stating whether or not it objects to the proposed divestures. If the United States provides written notice to Defendants and the trustee that it does not object, then the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed purchaser or purchasers or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. upon objection by Defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

*VII. Affidavits*

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed, whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to Plaintiff an affidavit as to the fact and manner of compliance with Section IV or Section V of this Final Judgment. Each such affidavit shall include, *inter alia,* the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiation to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that the Defendants have taken to solicit a purchaser for the Divesture Assets and to provide required information to prospective purchasers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to Plaintiff an affidavit which describes in detail all actions Defendants have taken and all steps Defendants have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Defendants' efforts to maintain and operate the Divestiture Assets as active competitors, maintain the management, staffing, research and development activities, sales, marketing, and pricing of the Divestiture Assets, and to maintain the Divestiture Assets in operable condition at current capacity configurations. Defendants shall deliver to Plaintiff and affidavit describing any changes to the efforts and actions outlined in Defendants' earlier affidavit(s) filed pursuant to this Section VII(B) within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestitures have been completed, Defendants shall preserve all records of all efforts made to preserve the businesses to be divested and effect the divestitures.

*III. Hold Separate Order*

Until the divestitures required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court and to preserve in all material respects the Divestiture Assets. Defendants shall take no action that would jeopardize the divestiture of the Divestiture Assets.

*IX. Financing*

Defendants are ordered and directed not to finance all or any part of any purchase by an acquirer made pursuant to Sections IV or V of this Final Judgment.

*X. Compliance Inspection*

For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendants, shall be permitted:

1. Access during office hours of Defendants to inspect and copy, or at Plaintiff's option demand Defendants provide copies of, all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Defendants, who may have counsel present, relating to any matters contained in this Final Judgment and the Hold Separate Stipulation and Order; and

2. To interview, either informally or on the record, their officers, employees, and agents, who may have their

individual counsel present, regarding any such matters. The interviews shall be subject to the interviewee's reasonable convenience and without restraint or interference from the Defendants.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division Defendants shall submit written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment and the Hold Separate Stipulation and Order.

C. No information nor any documents obtained by the means provided in Sections VII or X of this Final Judgment shall be divulged by a representative of the United States to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Defendants to Plaintiff, Defendants represent and identify in writing the material in any such information or documents for which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then Plaintiff shall give ten (10) days notice to Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Defendants are not a party.

*XI. Retention of Jurisdiction*

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

*XII. Termination*

Unless this Court grants an extension, this Final Judgment will expire on the tenth anniversary of the date of its entry.

*XIII. Public Interest*

Entry of this Final Judgment is in the public interest.

Dated _____

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16.

_____

United States District Judge

*Certificate of Service*

I hereby certify that I have caused a copy of the foregoing Hold Separate Stipulation and Order and attached proposed Final Judgment to be served on counsel for defendants in this matter in the manner set forth below:

By first class mail, postage prepaid, and by hand:

Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006–1801

Michael H. Byowitz, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019–6150

Dated: May 3, 2000.

Andrew K. Rosa,

*Hawaii Bar #6366, Trial Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, (202) 307–0886, (202) 616–2441(Fax).*

**Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and penalties Act (''APPA''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

*I. Nature and Purpose of the Proceeding*

On May 3, 2000, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Alcoa Inc. (''Alcoa'') of Reynolds Metals Company (''Reynolds'') would, if consummated, violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that the proposed merger will substantially lessen competition in the refining and sale of both smelter grade alumina (''SGA''), which is used to produce aluminum ingots, and chemical grade alumina (''CGA'' or ''hydrate''), an ingredient used in numerous industrial and consumer products. This competition has benefitted consumers through lower prices and higher output. The proposed merger of Alcoa and Reynolds would substantially increase the concentration of SGA and CGA markets. Unless the merger is blocked, the loss of competition will substantially enhance Alcoa's control over the prices of SGA and CGA, while also increasing the likelihood of anticompetitive coordination in the SGA and CGA markets.

The prayer for relief in the Complaint seeks: (1) a judgment that the proposed acquisition would violate Section 7 of the Clayton Act; (2) a permanent injunction preventing Alcoa from acquiring Reynolds; (3) an award to the United States of its costs in bringing the lawsuit; and (4) such other relief as the Court deems proper.

When the Complaint was filed, the United States also filed a proposed settlement that would permit Alcoa to complete its acquisition of Reynolds, but would require divestitures that will preserve competition in the relevant markets. This settlement consists of a Hold Separate Stipulation and Order and a proposed Final Judgment.

The proposed Final Judgment orders Defendants to divest, (1) within two hundred seventy (270) days after the filing of the complaint in this matter, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later, all of Reynolds' interest in the Worsley Joint Venture, established by agreement dated February 7, 1980, and subsequently amended (''Worsley Interest''), and (2) within one hundred eighty (180) days after the filing of the complaint in this matter, or five (5) days after notice of entry of the final Judgment by the Court, whichever is later, all assets, interests, and rights owned by Reynolds at Reynolds' alumina refinery located near Corpus Christi, Texas, that are used or held for use for alumina refining (''Corpus Christi Assets'') (collectively referred to as ''the Divestiture Assets'') to an acquirer or acquirers acceptable to the Antitrust Division of the Department of Justice (''DOJ'').

Until the required divestitures are completed, the terms of the Hold Separate Stipulation and Order entered into by the parties apply to ensure that the Divestiture Assets shall be maintained and operated as independent, ongoing, economically viable, and active competitors in the manufacture and sale of SGA and CGA.

The Plaintiff and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate the action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

*II. Description of the Events Giving Rise to the Alleged Violation*

A. The Defendants and the Proposed Transaction

Alcoa is a Pennsylvania corporation, with its principal offices located in Pittsburgh, Pennsylvania. Alcoa is the largest integrated aluminum company in the United States and the world with 1999 revenues of over $16 billion. Alcoa engages in all stages of aluminum production, including mining raw aluminum ore (''bauxite''), refining bauxite into alumina powder, smelting alumina into metal ingots, and utlimately fabricating the metal ingots into end products.

Alcoa produces SGA at several facilities around the world. Alcoa owns alumina refineries in Kwinana, Pinjarra, and Wagerup, Western Australia; Pocos de Caldas, Brazil; San Ciprian, Spain; St. Croix, U.S. Virgin Islands; and Pt. Comfort, Texas. Alcoa also manages the operations of three alumina refinery joint ventures in which it has an ownership interest: Paranam, Suriname (55 percent Alcoa ownership); Sao Luis, Brazil (54 percent Alcoa ownership); and Clarendon, Jamaica (50 percent Alcoa ownership). Alcoa produces CGA for North America at its Pt. Comfort refinery.

Reynolds is a Virginia corporation with its principal offices in Richmond, Virginia. Reynolds is the second largest integrated aluminum company in the United States and the third largest in the world with 1999 revenues of over $4.6 billion. Reynolds engages in all stages of aluminum production, including mining bauxite, refining bauxite into alumina powder, smelting alumina into metal ingots, and ultimately fabricating the metal ingots into end products.

Reynolds produces SGA at several facilities around the world. Reynolds owns the Corpus Christi Refinery and owns a 56 percent interest along with operating control of the management of the Worsley refinery. Reynolds also owns a 50 percent interest in a refinery in Stade, Germany, and manages and is entitled to 10 percent of the production of the Friguia, Guinea alumina refinery. Reynolds produces CGA for North America at its Corpus Christi refinery.

On August 18, 1999, Alcoa and Reynolds entered into an agreement under which Alcoa would acquire Reynolds in a stock exchange. This transaction, which would substantially increase concentration in the markets for SGA and CGA, precipitated the government's suit.

B. Affected Markets

1. *The World SGA Market.* The fabrication of aluminum products begins with the mining of bauxite. Bauxite is processed at refineries to extract alumina. SGA is alumina that is used by aluminum smelters to make aluminum metal. About two-thirds of total SGA production is internally consumed by smelters owned by SGA producers. Surplus SGA refined by vertically integrated firms is sold to third-party purchasers. Some of the third-party purchasers are themselves vertically integrated firms that have a deficit of internal SGA production; other purchasers of SGA are independent smelters with no alumina operations.

There is no product that can be substituted for SGA to make aluminum metal. If aluminum smelters were confronted with a small but significant SGA price increase, smelter owners would have to pay the higher price or close their smelters.

Aluminum smelters purchase alumina from refineries located throughout the world. Alcoa, Reynolds, and other alumina refiners refine and sell SGA throughout the United States and the world.

It is extremely costly and inefficient to shut down a smelting operation; smelters therefore require a stable and steady supply of SGA to maintain production. A small decrease in the supply of SGA will cause a significant increase in the price of SGA (*i.e.,* demand for SGA is highly inelastic). When the July 1999 explosion at Kaiser Aluminum Corporation's Gramercy, Louisiana, refinery removed 2 percent of world alumina capacity, SGA ''spot'' prices nearly tripled, and long-term SGA contract prices increased 20 percent to 30 percent.

2. *The North American CGA Market.* Alumina refineries produce two different products—SGA and CGA. Until the last stage of the refining process, SGA and CGA undergo the identical refining process. At that stage, SGA is calcined in kilns. CGA is removed prior to calcining and sold as ''wetcake'' or dried and sold as dry hydrate.

CGA is an important ingredient in numerous products such as zeolites (used in detergents), solid surface counter tops, catalysts for oil refineries and bus exhaust systems, white pigments in the paper industry, flame retardants, and water treatment chemicals. Other products are not reasonable substitutes for CGA. If the price of CGA were to increase by a small but significant amount, a significant number of current purchasers are unlikely to switch to alternative products in sufficient numbers to undermine the price increase. In order to substitute another less suitable product, the product in which CGA was used would have to reformulated, a lengthy and expensive process.

Prices of CGA vary in different regions throughout the world. CGA is sold in North America, and North American producers of CGA compete for sales to customers located throughout North America. Imports of CGA into North America account for less than 5 percent of the CGA sold in North America.

Importation of CGA into North America is unlikely to increase significantly in response to a small but significant anticompetitive increase in the price of CGA in North America. The additional handling of the product that occurs in importing CGA increases the likelihood that it will become contaminated. Also, the costs of freight, handling, and storage are too high to import the product economically in the quantities required by customers in North America.

C. *Harm to Competition as a Consequence of the Acquisition.* By merging with Reynolds, Alcoa's market share will increase approximately from 29 to 38 percent of world SGA capacity and from 39 to 59 percent of North American CGA production. These increases in market shares will significantly enhance Alcoa's incentive and ability to exercise market power unilaterally by reducing its output in the world SGA and North American CGA markets. Alcoa's increased market shares resulting from the acquisition would give it larger sales bases on which is can profit from the higher prices.

The proposed transaction will also increase the likelihood of anticompetitive coordination among the remaining firms in the world SGA and North American CGA markets. The SGA market has certain characteristics conducive to anticompetitive coordination, including product homogeneity; stable, predictable, and inelastic demand and supply; and transparency of actions by suppliers and customers. The CGA market also has certain characteristics conducive to coordinated interaction, including product homogeneity and high concentration (there are only five producers of CGA in North America and post-merger the top three CGA producers will account for 90 percent of the market).

An increase in output of SGA or CGA in response to anticompetitive price

increases is unlikely to be timely or sufficient to undermine the price increases. Firms are currently operating at or near capacity and are expected to continue to do so during at least the next two years. Successful entry through the construction of a new ''greenfield'' alumina refinery or through the expansion of an existing ''brownfield'' refinery is slow, costly, and difficult. A minimum efficient scale greenfield refinery could cost $1 billion and take four years or longer from planning to operation. Reynolds' expansion of its Worsley refinery is costing $700 million and was scheduled to take thirty-two months. No company attempted entry or expansion in response to the Gramercy closure despite the significant increase in SGA prices after the closure.

In the world market for SGA and the North American market for CGA, the proposed merger threatens substantial and serious harm to consumers. By substantially increasing Alcoa's market shares of SGA and CGA capacity in the relevant markets, the proposed merger will provide Alcoa with substantially enhanced control over the prices of SGA and CGA, while also increasing the likelihood of anticompetitive coordination in these markets.

The Complaint alleges that the effect of Alcoa's proposed acquisition of Reynolds would be to eliminate actual and potential competition between Alcoa and Reynolds; to lessen substantially competition in the production and sale of SGA and CGA; to increase prices for SGA and CGA; and to decrease the amount of SGA and CGA produced.

*III. Explanation of the Proposed Final Judgment*

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition of Reynolds by Alcoa. The divestitures required by the Final Judgment will ensure that competition will continue and be preserved in the SGA and CGA markets. Divestiture of the Divestiture Assets preserves competition because it will restore the world SGA and North American CGA markets to the structures that existed prior to the acquisition and will preserve the existence of independent competitors in these markets.

Divestiture of the Worsley Interest and the Corpus Christi Assets preserves competition in the SGA market by requiring Alcoa to sell virtually all of the world-wide SGA refining capacity owned by Reynolds.[1] Divesting the Corpus Christi Assets also preserves competition in the North American CGA market by requiring Alcoa to sell all of Reynolds' refining capacity used to supply the North American CGA market. Without the divestitures, consumers of SGA and CGA would suffer from higher prices for these products.

The proposed Final Judgment provides that Alcoa must divest, (1) the Worsley Interest within two hundred seventy (270) days after the filing of the complaint in this matter, or five (5) days after notice of entry of the Final Judgment by the Court, whichever is later; and, (2) the Corpus Christi Assets within one hundred eighty (180) days after the filing of the Complaint in this matter, or five days (5) after notice of entry of the Final Judgment by the Court, whichever is later, to an acquirer or acquirers acceptable to the DOJ. The time period for the divestiture of the Worsley Interest is longer than that for the Corpus Christi Assets in order to allow for the exercise of certain rights of Reynolds' co-venturers in the Worsley Joint Venture. The assets to be divested are defined in detail in Section II of the Final Judgment.

The divestitures shall be accomplished by selling or otherwise conveying the Divestiture Assets to a purchaser or purchasers in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by the purchaser or purchasers as part of a viable, ongoing business or businesses engaged in the refining and sale of SGA or CGA. The divestitures shall be made to a purchaser or purchasers with respect to whom it is demonstrated to the United States' sole satisfaction that (a) the purchaser or purchasers have the intent to compete effectively in the refining and sale of SGA or CGA and (b) the purchaser or purchasers have the managerial, operational, and financial capability to compete effectively in the refining and sale of SGA or CGA. In addition, none of the terms of any agreement between the purchaser or purchasers and Defendants, including any joint venture, governance, operation, or shareholder agreements, shall give Defendants, including any joint venture, governance, operation, or shareholder agreements, shall give Defendants the ability to limit the purchaser's capacity or output, to raise a purchaser's costs, to lower a purchaser's efficiency, or otherwise to interfere in the ability of the purchaser or purchasers to compete effectively.

If Defendants fail to divest the Divestiture Assets within the prescribed time, a trustee selected by DOJ will be appointed. The Final Judgment provides that Defendants will pay all costs and expenses of the trustee. At the end of six (6) months, if the divestiture has not been accomplished, the trustee and the parties will have the opportunity to make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the proposed Final Judgment, including extending the trust or the term of the trustee's appointment.

In connection with the sale of the Divestiture Assets, the Final Judgment permits Defendants to enter certain agreements with the new owner(s) to purchase SGA under two specified circumstances. Neither of the permitted arrangements would give Alcoa any mechanism for limiting SGA output by any new owner of Divestiture Assets. First, the Final Judgment allows, but does not require, Alcoa to negotiate agreements to purchase SGA from the new owner(s) to supply, on a transitional basis, the smelters that Reynolds had previously supplied internally from the divestiture Assets. Because of the importance of assuring a large, reliable supply of SGA, smelter operators that depend on SGA supplies from an independent source enter long-term contracts for that supply, and often begin negotiations a year or more in advance of the expiration of current contracts. In addition, the chemical characteristics of SGA vary by source, and a smelter must be recalibrated to the specifications of its new SGA supply, a time consuming process. Because the sale of the Divestiture Assets would remove the historical source of captive SGA supply for a number of former Reynolds smelters, the Final Judgment permits Alcoa a transition period to locate new SGA supplies. Any agreement entered pursuant to this provision may have a term of no more than three (3) years, which is significantly shorter than the industry average for SGA supply contracts, and may cover only partial requirements for that period. Volume requirements during the fist year may be up to 100 percent of the annual volumes supplied by the divested refineries to such smelters during the year prior to the closing of the merger transaction, up to 75 percent of that volume during the second year, and up to 50 percent during the third year.

Second, the Final Judgment requires Alcoa to divest, as one of the assets included in the Worsley Interest,

[1] Reynolds' relatively small SGA output at its Stade, Germany, refinery will be divested pursuant to an undertaking with the European Commission. After the divestitures required by the European Commission and the proposed Final Judgment, all of the alumina refining capacity owned by Reynolds will have been divested.

Reynolds' long-term contractual right to sell SGA to Billiton Plc (''Billiton''). Because Billiton retains a veto over assignment of its contract to the new owner, however, Alcoa may remain the party legally obligated to supply SGA to Billiton. If and only if Billiton exercises its veto, Alcoa may enter an agreement with the new owner of the Worsley Interest to purchase the amount of SGA needed to satisfy Reynolds' existing contractual obligation to Billiton. The Final Judgment requires Alcoa to resell, as an intermediary, any SGA so obtained to Billiton in fulfillment of the existing Reynolds-Billiton contract. By requiring Alcoa to simply pass through this volume of SGA to Billiton, the Final Judgment prevents Alcoa from gaining additional control over SGA output by entering into such an arrangement.

In addition, the Final Judgment requires Defendants to offer the purchaser of the Corpus Christi Assets, at that purchaser's option, a contract for a term of at least two (2) years to supply bauxite to the Corpus Christi Refinery. This requirement may make the Corpus Christi Assets more attractive to purchasers by enabling the purchaser to negotiate supply arrangements for the Corpus Christi Refinery that are substantially similar to existing supply arrangements.

*IV. Remedies Available to Potential Private Litigants*

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Defendants.

*V. Procedures Available for Modification of the Proposed Final Judgment*

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**. Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20004.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

*VI. Alternatives to the Proposed Final Judgment*

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against the Defendants.

The United States is satisfied that the divestitures specified in the proposed Final Judgment will preserve viable competition in the manufacture and sale of SGA worldwide and of CGA in North America. Thus, the proposed Final Judgment will achieve all the relief that the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Compliant.

*VII. Standard of Review Under the APPA for Proposed Final Judgment*

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day (60) comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider—

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modifications, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e). As the Court of Appeals for the District of Columbia Circuit held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''the Court nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather,

(a)bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988), *quoting United States* v. *Bechtel Corp., 648 F.2d 660, 666 (9th Cir.), cert. denied,* 454 U.S. 1083 (1981); *see also, Microsoft,* 56 F.3d at 1460–62. Precedent requires that

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but

[2] 119 Cong. Rec. 24598 (1973). *See also United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest''' [4]

*VIII. Determinative Documents*

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

For Plaintiff United States of America:
Dated: June 6, 2000.
Respectfully submitted,

Allee A. Ramadhan,
*D.C. Bar # 162131.*
Bruce Pearson,
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*Certificate of Service*

I hereby certify that I have caused a copy of the foregoing Competitive Impact Statement to be served on counsel for Defendants in this matter in the manner set forth below:

By first class mail, postage, and by facsimile:

Mark Leddy, Cleary, Gottlieb, Steen & Hamilton, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006–1801
Michael H. Byowitz, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, NY 10019–6150.

Dated: June 6, 2000.

**Andrew K. Rossa,**

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[FR Doc. 00–15594 Filed 6–20–00; 8:45 am]

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[3] *Bechtel,* 648 F.2d at 666 (internal citations omitted) (emphasis added); *see BNS,* 858 F.2d at 463; *United States* v. *National Broad. Co.,* 449 F. Supp. 1127, 1143 (C.D.Cal. 1978); *Gillette,* 406 F. Supp. at 716. *See also Microsoft,* 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'''') (citations omitted).

[4] *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (citations omitted) (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983), *quoting Gillette,* 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Proposed Final Judgment and Competitive Impact Statement; United States v. AT&T Corp. and MediaOne Group, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement have been filed with the U.S. District Court for the District of Columbia in *United States* v. *AT&T Corp. and MediaOne Group, Inc.,* Civil No. 00CV01176 (RCL). The United States filed a civil antitrust Complaint on May 25, 2000 alleging that the proposed acquisition of MediaGroup, Inc. (''MediaOne'') by AT&T Corp. (''AT&T'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The proposed Final Judgment requires AT&T to divest the 34% equity interest and significant management interest in ServiceCo., LLC (''ServiceCo''), the nation's second-largest provider of residential broadband services, which operates under the trade name ''Road Runner'' that it would acquire through its merger with MediaOne no later than December 31, 2001.

Public comment is invited within the statutory sixty-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the court. Written comments should be directed to Donald J. Russell, Chief, Telecommunications Task Force, 1401 H Street, NW, Washington, DC 20530 (telephone: (202) 514–5621).

Copies of the Complaint, proposed Final Judgment, Competitive Impact Statement are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

### United States District Court for the District of Columbia

*United States of America, Plaintiff,* v. *AT&T Corp. and MediaOne Group, Inc., Defendants;* Civil No.: 00 1176.

### Stipulated Order

The Court hereby enters this Stipulated Order, ordering and adjudging as follows:

(1) The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in this Court.

(2) A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court and provided that Defendants have not abandoned their proposed merger and withdrawn their filing under the Hart-Scott-Rodino Antitrust Improvements Act, 15 U.S.C. 18a.

(3) Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

(4) This Stipulated Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

(5) In the event plaintiff withdraws its consent or Defendants abandon their proposed merger and withdraw their filing under the Antitrust Procedures and Penalties Act, as provided in paragraph (2) above, or in the event that the Court declines to enter the proposed Final Judgment pursuant to this

Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

(6) Defendants, having represented that the divestiture ordered in the proposed Final Judgment can and will be made, will not raise claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

The undersigned parties hereby stipulate to the entry of this Stipulated Order.

For Plaintiff United States of America: Joel I. Klein, Assistant Attorney General. A. Douglas Melamed, Principal Deputy Assistant Attorney General. Constance K. Robinson, Director of Operations and Merger Enforcement. Donald J. Russell, Chief, Telecommunications Task Force. Laury Bobbish, Assistant Chief, Telecommunications Task Force. Claude F. Scott, Jr., D.C. Bar No. 414960, Lawrence M. Frankel, D.C. Bar No. 441532, Attorneys, Telecommunications Task Force. U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5621.

For Defendant AT&T Corp.: Mark C. Rosenblum, Larry J. Lafaro, AT&T Corp., 295 North Maple Avenue, Basking Ridge, NJ 07920, (908) 221–2000. David W. Carpenter, D.C. Bar No. 306084, David L. Lawson, Sidley & Austin, Bank One Plaza, Chicago, IL 60603, (312) 853–7237. Ilene K. Gotts, Wachtell, Lipton, Rosen & Katz, 51 West 52nd Street, New York, New York 10019.

For Defendant MediaOne Group, Inc.: Sean C. Lindsay, MediaOne Group, Inc., 188 Inverness Drive West, Suite 600, Englewood, CO 80112, (303) 858–3507.

Stipulated Order Approved for Filing.

Done this ___ day of May, 2000. _____
United States District Judge

**Final Judgment**

*Whereas,* plaintiff, United States of America, filed its Complaint on May 25, 2000;

*And Whereas,* plaintiff and defendants, AT&T Corp. (''AT&T'') and MediaOne Group, Inc. (''MediaOne''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

*And Whereas,* AT&T and MediaOne agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

*And Whereas,* the essence of this Final Judgment is the reorganization of certain business relationships of AT&T and MediaOne to assure that competition is not substantially lessened;

*And Whereas,* plaintiff requires AT&T and MediaOne to restructure certain of their business relationships for the purpose of remedying the loss of competition alleged in the Complaint;

*And Whereas,* AT&T and MediaOne have represented that the restructuring required below can and will be made, that AT&T and MediaOne can assure compliance with the requirements of this Final Judgment, and that AT&T and MediaOne will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions relating to the required restructuring or the limitations on subsequent agreements contained below;

*Now Therefore,* before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

**I. Jurisdiction**

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

**II. Definitions**

As used in this Final Judgment:

A. ''Affiliate'' means any person, corporation, partnership, or joint venture that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person, corporation, partnership, or joint venture. For purposes of this definition, the term ''own'' means to own an equity interest (or the equivalent thereof) of 50 percent or more.

B. ''AT&T'' means AT&T Corp., a New York corporation with its headquarters in New York, New York, its successors and assigns, and its parents, majority-owned subsidiaries, divisions, groups, and their officers, managers, agents, and employees. For purposes of Section IV of this Final Judgment, ''AT&T'' or its Affiliates shall not include Liberty Media or any entity which would be included within the definitions of ''AT&T''' or ''AT&T's'' Affiliates solely because of Liberty Media's ownership interests.

C. ''Cable Modem Service'' means any Residential Broadband Service provided over cable facilities.

D. ''MediaOne'' means MediaOne Group, Inc., a Delaware corporation with its headquarters in Englewood, Colorado, its successors and assigns, and its parents, majority-owned subsidiaries, divisions, groups, and their officers, managers, agents, and employees.

E. ''Operating Agreement'' means the agreement entitled Amended and Restated Operating Agreement of ServiceCo LLC, dated June 12, 1998, among Cable HoldCo LLC, Microsoft BOV, Inc., and CPQ Holdings, Inc.

F. ''Residential Broadband Service'' means any service offered to residential customers in the United States of America that permits users to transmit and receive information using Internet protocols at speeds which may exceed 128 kilobits per second.

G. ''ServiceCo'' means ServiceCo LLC, a Delaware limited liability company.

H. ''ServiceCo Interest'' means any direct or indirect financial ownership interest in, and any direct or indirect role in management or participation in control of, ServiceCo LLC to be held by AT&T pursuant to AT&T's acquisition of MediaOne. However, any ServiceCo Interest held as of May 8, 2000 by AT&T or MediaOne solely by virtue of ownership of a limited partnership interest in Time Warner Entertainment Company, L.P. shall not be considered a ServiceCo Interest for the purposes of this Judgment.

H. ''Time Warner'' means Time Warner, Inc., a Delaware corporation with its headquarters in New York, New York, Time Warner Entertainment Co., L.P., and ServiceCo, their successors and assigns, and their parents, divisions, groups, and majority-owned subsidiaries; and any legal entity that is subject to a merger or other agreement with Time Warner, Inc. and that would be included within this definition when such agreement is consummated.

**III. Applicability**

This Final Judgment applies to AT&T and MediaOne, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

**IV. Restructuring**

A. AT&T or MediaOne shall divest the ServiceCo Interest on or before December 31, 2000; provided, however, that this divestiture obligation shall not

prohibit AT&T's or MediaOne's retention or acquisition of assets dedicated solely to the provision of service to MediaOne customers or any regional data centers that are used predominantly for the provision of service to MediaOne customers as defined in section 6.3(b) of the Operating Agreement (''Assets'').

B. AT&T and MediaOne must satisfy the requirements of Section IV(A) of this Final Judgment through one of the methods described in this Section IV(B)(1)–(3):

(1) AT&T and MediaOne shall take all necessary steps to implement (a) the dissolution of ServiceCo pursuant to the terms of sections 6.1 and 6.2 of the Operating Agreement; and (b) the distribution of the ServiceCo assets pursuant to the terms of section 6.3 of the Operating Agreement; provided, however, that notwithstanding any other contractual rights of AT&T or MediaOne, AT&T and MediaOne shall consent to the acquisition by Time Warner of any or all of ServiceCo's remaining assets (*i.e.* those assets remaining after AT&T or MediaOne retain or acquire Assets) at the fair market value of those assets (determined by a third party appraisal if the parties do not agree on valuation) so long as AT&T or MediaOne are permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002 in order to maintain the quality of Cable Modem Services that AT&T and MediaOne offer to their customers; or

(2) AT&T and MediaOne shall take all necessary steps to divest the ServiceCo Interest pursuant to section 9.3 of the Operating Agreement; or

(3) AT&T and MediaOne shall implement an alternative plan for divestiture of the ServiceCo Interest that has been agreed to by AT&T and MediaOne and approved in writing by Plaintiff in its sole discretion.

C. If the remaining parties to the Operating Agreement whose consent is required offer to allow AT&T and MediaOne to terminate their affiliation agreement and divest the ServiceCo Interest pursuant to either of the methods specified in Section IV(B)(1) or (2) above after the closing of the merger between AT&T and MediaOne and prior to December 31, 2001, AT&T and MediaOne shall accept that offer and divest the ServiceCo interest on the date proposed by the other parties; provided that AT&T or MediaOne are permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002, in order to maintain the quality of Cable Modem Services that AT&T and MediaOne offer to their customers.

**V. Limitations on Subsequent Agreements**

A. Prior to the earlier of December 31, 2003 or two years after AT&T's and MediaOne's divestiture of the ServiceCo Interest, unless they obtain the prior consent of Plantiff, AT&T, MediaOne, and their Affiliates shall not (1) enter into any contractual or other arrangement with Time Warner to jointly offer or provide any wholesale or retail Residential Broadband Service; (2) enter into any contractual or other arrangement with Time Warner that has the purpose or effect of preventing AT&T, MediaOne, their Affiliates or Time Warner from offering or providing a wholesale or retail Residential Broadband Service in any geographic region or to any group of customers; or (3) enter into any contractual or other arrangement with Time Warner that has the purpose or effect of preventing (a) AT&T, MediaOne, their Affiliates or Time Warner from including any content, services, capabilities, or features in any wholesale or retail Cable Modem Service offered by AT&T, MediaOne, their Affiliates, or Time Warner, or (b) AT&T, MediaOne or their Affiliates from granting preferential treatment in any wholesale or retail Cable Modem Service offered by AT&T, MediaOne or their Affilates to content, services, capabilities, or features offered by any person other than Time Warner, or Time Warner from granting preferential treatment in any wholesale or retail Cable Modem Service offered by Time Warner to content, services, capabilities, or features offered by any person other than AT&T, MediaOne or their Affiliates.

B. Plaintiff shall consent to a proposed contractual or other arrangement if it determines in its sole discretion that such arrangement will not substantially lessen competition between AT&T and its Affiliates, and Time Warner in any market. Plaintiff shall be deemed to have consented to the proposed arrangement if Plaintiff has not provided written objection within 30 days of the submission of a request for Plaintiff's consent. If Plaintiff provides a written objection to a request within the 30 day period, Plaintiff's determination shall be final and binding unless, on application by AT&T or MediaOne, the Court concludes that Plaintiff abused its discretion in refusing to consent to an agreement.

C. AT&T's and MediaOne's participation in the management and governance of ServiceCo prior to completion of the restructuring required by Section IV in accordance with the requirements of Section VI. and its agreement to receive transitional services in accord with Section IV shall not violate the restrictions of Section V.

**VI. AT&T's and MediaOne's Interim Participation in the Management and Governance of ServiceCo**

Until the divestiture required by this Final Judgment has been accomplished, AT&T and MediaOne shall conduct their relationship with ServiceCo in accordance with all of the requirements specified below, except as Plaintiff may otherwise consent in writing.

A. Except as necessary to comply with this Final Judgment, AT&T and MediaOne shall take all necessary steps to ensure that the management of the ServiceCo Interest will be kept separate and apart from, and not influenced by, the operation of AT&T and its Affiliates, and all books, records, and competitively-sensitive sales, marketing, and pricing information associated with ServiceCo will be kept separate and apart from the books, records, and competitively-sensitive sales, marketing, and pricing information associated with AT&T's and its Affiliates' other businesses.

B. AT&T and MediaOne are prohibited (1) from participating in or attempting to influence any decision by ServiceCo regarding ServiceCo's offering of wholesale or retail residential broadband services to any customer other than AT&T's, MediaOne's and Time Warner's cable systems; (2) from participating in or attempting to influence any decision by ServiceCo relating to the content or services provided by any person other than Time Warner to ServiceCo subscribers; and (3) from impeding ServiceCo's ability to obtain additional capital from other direct or indirect holders of equity in ServiceCo.

C. Upon closing of the merger of AT&T and MediaOne, AT&T shall appoint a person or persons (the ''Appointee'') to oversee the ServiceCo Interest, who will also be responsible for AT&T's and MediaOne's compliance with this section. The Appointee shall have complete managerial responsibility for the ServiceCo Interest, subject to the provisions of this Final Judgment and subject to review and direction by AT&T's Chairman of the Board, its Chief Financial Officer, its Chief Operating Officer, General Counsel, and its Board of Directors. In the event that the Appointee is unable to perform his or her duties, AT&T shall appoint a replacement within ten (10) working days. The Appointee shall have the authority to act on AT&T's and

MediaOne's behalf in exercising the rights under the Operating Agreement and the Affiliation Agreement that AT&T and MediaOne are permitted to exercise under the terms of this Final Judgment.

1. The Appointee shall be permitted to consult with individuals whose responsibilities pertain to the MediaOne cable systems only when necessary to exercise rights under the Operating Agreement and the Affiliation Agreement that AT&T and MediaOne are permitted to exercise under the terms of this Final Judgment. The Appointee may disclose non-public information regarding ServiceCo's operations to personnel whose responsibilities pertain to the MediaOne cable systems only when necessary to exercise AT&T's and MediaOne management rights, and no such information regarding ServiceCo's operations may be disclosed by the Appointee or by personnel whose responsibilities pertain to the MediaOne cable systems to other personnel of AT&T or its Affiliates.

2. The Appointee shall not communicate with any individuals employed by AT&T, MediaOne or their Affiliates with responsibilities relating to the operations of Excite@Home or AT&T cable systems other than those acquired from MediaOne. The Appointee shall not be given access to any nonpublic information regarding the operations of Excite@Home or AT&T cable systems other than those acquired from MediaOne.

3. Except for those circumstances provided for in this Section or as may otherwise be required by law, in no event shall any employee of AT&T, MediaOne or their Affiliates, other than the Appointee, have access to any nonpublic information regarding the operations and management of ServiceCo.

**VII. Compliance Inspection**

For the purposes of determining or securing compliance of defendants with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to AT&T or MediaOne made to its principal office, shall be permitted without restraint or interference from AT&T and MediaOne:

1. To have access during office hours of AT&T or MediaOne to inspect and copy or, at plaintiff's option to, request AT&T or MediaOne to provide copies of all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of AT&T or MediaOne, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, and to take sworn testimony from the officers, directors, employees, or agents of AT&T and MediaOne, who may have their individual counsel present, relating to any matters contained in this Final Judgment.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, made to AT&T or MediaOne, AT&T or MediaOne shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, or to the FCC (pursuant to a customary protective order or a waiver of confidentiality by AT&T or MediaOne), except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by AT&T or MediaOne to plaintiff, AT&T or MediaOne represent and identify in writing the material in any such information or documents as to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) calendar days' notice shall be given by Plaintiff to AT&T or MediaOne prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which AT&T or MediaOne is not a party.

**VIII. Retention of Jurisdiction**

Jurisdiction is retained by this Court for the purposes of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

**IX. Further Provisions and Termination**

A. The entry of this judgment is in the public interest.

B. Unless this Court grants an extension, this Final Judgement shall expire on the tenth anniversary of the date of its entry.

Date: _____

_____

Judge, United States District Court

**Certificate of Service**

I hereby certify that copies of the foregoing Plaintiff United States' Stipulated Order and proposed Final Judgment, were served via U.S. Mail, first class postage prepaid, on this 25th day of May 2000 upon each of the parties listed below:

Attorneys for AT&T Corp: Mark Rosenblum, AT&T Corp., Basking Ridge, New Jersey 07920. David Carpenter, Sidley & Austin, Bank One Plaza, Chicago, IL 60603.

Attorney for Media One Group, Inc.: Sean Lindsay, MediaOne Group, Inc., 188 Inverness Drive, West, Suite 600, Englewood, CO 80112.

Claude F. Scott, Jr.,
Counsel for the United States.

**Competitive Impact Statement**

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C § 16(b)–(h) (''APPA''), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

**I. Nature and Purpose of the Proceeding**

The United States filed a civil antitrust Complaint on May 25, 2000 alleging that the proposed acquisition of MediaOne Group, Inc. (''MediaOne'') by a AT&T Corp. (''AT&T'') would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by lessening competition in the nationwide market for the aggregation, promotion, and distribution of residential broadband content.

AT&T, through its ownership of TCI related companies, hold a majority of the voting securities in Excite@Home Corp. (''Excite@Home''), the nation's largest residential broadband services provider. Through its proposed acquisition of MediaOne, AT&T will acquire roughly a 34% equity interest and a significant management interest in ServiceCo, LLC (''ServiceCo''), the nation's second-largest provider of residential broadband services, which operates under the trade name ''Road Runner.''

By combining AT&T's controlling interest in Excite@Home with MediaOne's equity and management interest in Road Runner, the proposed

transaction threatens to substantially lessen competition by increasing concentration in the market for aggregation, promotion, and distribution of residential broadband content. Competition between Excite@Home and Road Runner in the provision of these services may be substantially lessened or even eliminated. Through its control of Excite@Home and its substantial influence or control of Road Runner, AT&T would substantially increase its leverage in dealing with broadband content providers, enabling it to extract more favorable terms for such services. AT&T's ability to affect the success of individual content providers could be used to confer market power on individual content providers favored by AT&T. By exploiting its ''gatekeeper'' position in the residential broadband content market AT&T could make it less profitable for disfavored content providers to invest in the creation of attraction broadband content, and reduce competition and restrict output in that market.

Shortly before the Complaint was filed, the United States and defendants reached agreement on the terms of a proposed Final Judgment. The proposed Final Judgment requires AT&T to divest the interest in ServiceCo that it would acquire through its merger with MediaOne no later than December 31, 2001. The proposed Final Judgment also contains provisions limiting AT&T's participation in the management and governance of ServiceCo, designed to minimize any risk of competitive harm that otherwise might arise pending completion of divestiture. It also contains provisions requiring AT&T to obtain the prior consent of the Justice Department before entering into certain types of agreements with the other principal partner in ServiceCo, Time Warner, that could have many of the same anticompetitive effects as the proposed merger would have. The proposed Final Judgment and a proposed Stipulated Order by which defendants consent to the entry of the proposed Final Judgment were filed simultaneously with the Complaint.

The United States and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (''APPA''). Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provision of the proposed Final Judgment and to punish violations thereof. The United States and defendants have also stipulated that defendants will comply with the terms of the proposed Final Judgment from the date of signing of the Stipulation, pending entry of the Final Judgment by the Court. Should the Court decline to enter the Final Judgment, defendants have also committed to continue to abide by its requirements until the expiration of time for any appeals of such ruling.

## II. Description of the Events Giving Rise to the Alleged Violation

### *A. The Defendants and the Proposed Transaction*

AT&T, headquartered in New York, New York, is the nation's largest long-distance telephone company, one of the nation's largest wireless telephony providers, a growing local telephony provider with nationwide ambitions, one of the top ten narrowband Internet service provider via AT&T WorldNet, and the nation's second-largest cable multiple system operator (''MSO''). AT&T's 1999 revenues totaled approximately $62.4 billion.

AT&T also controls Excite@Home Corp. (''Excite@Home''), the largest provider of residential broadband service. Excite@Home provides residential broadband service over cable systems to over 1.5 million end user subscribers and is growing rapidly. AT&T currently holds approximately a 26% equity interest in Excite@Home and a majority of its voting stock. AT&T recently entered into an agreement which, if implemented, will significantly increase its control over Excite@Home. Excite@Home has exclusive contract rights to provide residential broadband service over the cable facilities of its three principal equity holders, AT&T, Comcast Corporation, and Cox Communications, Inc., which collectively account for over 35% of the nation's cable subscribers. Excite@Home also provides residential broadband service over the cable facilities of a significant number of other cable system operators nationwide.

MediaOne Group, formerly US WEST/MediaOne, is the nation's seventh largest cable MSO and is headquartered in Englewood, Colorado. MediaOne owns cable systems in major metropolitan areas in several states including California, Georgia, and Florida. MediaOne also holds a 25.51% equity interest in Time Warner Entertainment (''TWE''). TWE owns and operates numerous cable systems, and holds interests in a number of cable programming networks. MediaOne's 1999 revenues totaled approximately $2.7 billion.

ServiceCo, LLC, a limited liability company owned by several Time Warner related entities, MediaOne, and subsidiaries of Microsoft Corporation and Compaq Computer Corporation, is the second largest provider of residential broadband in the United States, using the trade name ''Road Runner.'' Road Runner provides residential broadband service over cable systems to more than 730,000 end user subscribers, and its subscriber base is growing rapidly. MediaOne owns approximately 34% of Road Runner. MediaOne owns approximately 25% of Road Runner through a direct ownership interest in the holding company that owns Road Runner and has additional indirect ownership through MediaOne's interest in TWE. Many important Road Runner decisions require only the concurrence of MediaOne and Time Warner. Road Runner has exclusive contract rights through December, 2001 to provide residential broadband service over the cable facilities of its two principal cable parents, MediaOne and Time Warner, which collectively account for more than 25% of the nation's cable subscribers. Road Runner also provides residential broadband service over the cable facilities of several other cable system operators.

On May 6, 1999, AT&T and MediaOne agreed to merge in a transaction valued at roughly $56 billion. As a result of this transaction, AT&T will have substantial equity and management rights in both Excite@Home and Road Runner—two firms that, combined, serve a significant majority of the nation's residential broadband users.

### *B. Market To Be Harmed By the Proposed Merger*

The explosive growth of the Internet over the past several years has transformed the American economy as well as the lifestyles of millions of Americans. From a basic network that served primarily the military and academic institutions, the Internet has expanded into a network of networks which millions of individuals access daily for both personal and professional purposes. Increasing numbers of individuals have begun to access the Internet via ''broadband'' means—technology which allows the transmission of data at dramatically higher speeds and thereby enables new types of content and services to be delivered to consumers.

The vast majority of residential users of the Internet today access it via ''dial-up'' modems: their computer uses a standard telephone line to connect to an Internet Service Provider (''ISP'') which in turn connects the user to the Internet and any proprietary or exclusive content

offered by the ISP as a part of its service. This service generally allows users to send and receive data at rates of up to 56 kilobits per second or less and is referred to as ''narrowband'' access. A rapidly growing number of residential users are accessing the Internet through ''broadband'' networks and technologies. Broadband users may receive data at rates up to 25 times greater than the data transmission rate currently provided by narrowband access using standard dial-up modems.

In order to provide residential broadband service, an ISP must have access to transmission facilities capable of carrying data at a high rate between the facilities of the ISP and individual homes. The two principal types of transmission facilities used today to provide this access to residential customers are the networks owned by cable companies and local telephone companies.

Cable companies originally designed their networks to provide video programming to customers' homes, but in recent years many cable companies have upgraded their networks to provide the capability of two-way data transmission needed for residential broadband Internet service. Subscribers access the Internet over computers connected to a cable modem or, in some cases, over their televisions connected to a cable set-top box containing a cable modem. The cable modem sends and receives data over the cable company's transmission facilities to the facilities of the residential broadband service provider. Cable modem service generally permits the transmission of data from the ISP to the residence at rates of up to 1.5 Mbps-2 Mpbs, 25 times faster than the fastest dial-up connections now available.

Digital subscriber line (''DSL'') technology is used to enhance the transmission capabilities of existing copper telephone wires. DSL, which requires users to have a DSL modem attached to their personal computer, typically delivers downstream data transmission at rates between 256 Kbps and 1.5 Mbps. DSL service may be provided by local telephone companies or by other firms which contract with the local telephone company for the use of its copper wires. Because of technical limitations, and because upgrades of telephone networks which are needed to provide DSL service have not been completed in many areas, DSL service is available only to a portion of residences which have local telephone service.

Broadband transmission to residences is also provided through satellite technology, which uses a radio relay station in orbit above the earth to receive, amplify, and redirect signals. Satellite broadband services are provided by direct broadcast satellite (''DBS'') providers such as DIRECTV and may be provided within the next several years by low earth orbit (''LEO'') satellites deployed by firms such as Teledesic. At present, this technology provides only one-way broadband transmission; the satellite provider transmits data downstream to the consumer's home, but the consumer must use telephone lines for the upstream transmission of data from the home. Although satellite providers are working to address this deficiency, two-way satellite broadband service to the home may not be available for several years.

Broadband transmission may also be provided through ''fixed wireless'' technologies, including local multipoint distribution systems (''LMDS'') and multichannel multipoint distribution systems (''MMDS''). Fixed wireless technology uses microwave transmission facilities to transmit data to and from residential consumers. Although firms are investing significant sums of money to develop fixed wireless technology, residential broadband service using such technology is not yet available on a large scale to consumers, and likely will not be commercially deployed on a large scale in the immediate future.

As of early 2000, approximately 70% of the subscribers to residential broadband service use a cable modem service in which data is transmitted over the facilities of a cable company. DSL services are the second most frequently used, but though the number of DSL users is growing rapidly, DSL still lags substantially behind cable modem service in market penetration and acceptance. Satellite and fixed wireless service have only a very small portion of residential broadband subscribers.

Of the seven largest cable MSOs, five have contracted with Excite@Home or Road Runner to provide residential broadband service over their cable facilities. Excite@Home and Road Runner together serve the vast majority of subscribers who receive residential broadband Internet service over cable facilities, and a significant majority of all residential broadband subscribers.

Because of the rapid growth in the number of residential broadband subscribers, and the expectation that there will soon be very large numbers of such subscribers, many firms are developing content that will be particularly attractive to residential broadband consumers. The transmission capacity of residential broadband service allows customers to access content that contains much larger quantities of data, such as high quality ''streaming'' video and various forms of interactive entertainment. Much of this broadband content will not be readily accessible or attractive to narrowband users, because of the much longer times that are needed to transmit the data through narrowband facilities.

Content providers may earn revenue in a variety of ways—from the sale of advertising, from charging end users for access to the content, from the sale of products or services marketed through the Internet—and most of the revenue opportunities are substantially enhanced in proportion to increased numbers of consumers who access the content or services. Content providers produce most broadband content with national distribution in mind, largely in order to maximize the potential number of consumers they will reach, thereby maximizing advertising and other revenues. AT&T and Time Warner (a co-owner of Road Runner) are substantial providers of content and services which are or could be delivered to end users through residential broadband Internet facilities.

A relevant product market affected by this transaction is the market for aggregation, promotion, and distribution of broadband content and services. The success or failure of content providers depends greatly on their ability to attract large numbers of consumers. Excite@Home, Road Runner, and other residential broadband service providers and ''portals'' can substantially enhance or detract from a content provider's ability to reach large numbers of customers. A portal generally is an Internet site containing a ''first page'' as well as several subsequent pages, that users see with a high degree of frequency. These pages aggregate links to a variety of types of content and services, and facilitate users' efforts to find content and services by providing search engines, ''tree and branch'' indexes, and prominent links to Internet content and services, as well as proprietary content and services. Most ISPs, including Excite@Home and Road Runner, include the first page of their portal as the default ''start page'' (*i.e.*, the first screen a user seek upon access). There are also portals, such as Yahoo and Lycos, that are not affiliated with major ISPs. Many customers access content and service providers through portals and therefore content providers seek prominent links by which to promote their content and draw users to their sites. The more favorable the placement of a link (*e.g.*, ''first page'' rather than subsequent pages, a link that

includes a larger share of the screen, *etc.*), the greater the content provider's likely audience, advertising revenues, and profitability.

For providers of broadband content, *i.e.*, content that either requires broadband speeds or is much superior when viewed at broadband speeds, links that will attract more broadband customers, and only broadband customers, are more valuable than links that will be seen predominantly by narrowband users who will not access broadband content. Therefore, links that will be viewed by the general mass of Internet users—a substantial majority of which are narrowband users—are not a good substitute for links that will be widely and exclusively viewed by broadband users.

In addition, content providers seek network services such as caching that will facilitate the distribution of their data so as to enhance to quality and accessibility of their content. Caching stores a content provider's content at various locations throughout the country, closer to end users, thereby improving speed and performance. This is a particularly important service for broadband content providers who must rely on the rapid delivery of large quantities of data in order to provide the most attractive content. Broadband content providers therefore seek favorable data distribution arrangements, as well as favorable terms for aggregation and promotion of their content, in order to attract more customers.

The aggregation and promotion of content, and the efficient physical distribution of content, are valuable services to content providers that heavily influence their success or failure in the content market. Content providers typically contract on a nationwide basis with forms that provide such services.

Excite@Home and Road Runner are positioned to become two of the most important providers of aggregation, promotion, and distribution of residential broadband content. By virtue of the large number of subscribers to their residential broadband services, both firms will be able to significantly assist or retard the competitive efforts of broadband content providers, by granting or withholding aggregation, promotion, and distribution services, or through the prices, terms, and conditions by which such services are provided. Moreover, because of their ownership affiliations and exclusive contracts with many of the largest cable MSOs, it is unlikely that other providers of residential broadband services will be able to enter and attract comparable numbers of subscribers in the near term.

*C. Anticompetitive Consequences of the Merger*

Upon consummation, the proposed acquisition would give AT&T complete ownership and control of the assets and holdings of MediaOne, including MediaOne's ownership interest in Road Runner and significant influence over Road Runner's operations and management. AT&T's post-merger ownership interest in Road Runner will entitle it to participate in the governance of Road Runner, to have effective veto power over Road Runner management decisions, to be present at meetings of Road Runner's Members' Committee, and to obtain all information available to members of the Board of Directors, including competitively sensitive information.

AT&T's control over Road Runner and access to sensitive competitive Road Runner information combined with its control over Excite@Home and access to confidential Excite@Home information could facilitate collusion and coordination between Excite@Home and Road Runner in ways that would result in a substantial lessening of competition in the market for aggregation, promotion, and distribution of residential broadband content. Financial benefits derived from collusion that accrued to either Excite@Home or Road Runner would accrue in part to AT&T.

If the proposed merger were consummated, concentration in the market for aggregation, promotion, and distribution of residential broadband content and services would be substantially increased, and competition between Excite@Home and Road Runner in the provision of such services may be substantially lessened or even eliminated. Through its control of Excite@Home and substantial influence or control of Road Runner, AT&T would have substantially increased leverage in dealing with broadband content providers, which it could use to extract more favorable terms for such services.

The increased leverage that AT&T and its affiliates would acquire in this market could also be used to promote or retard the success of individual content providers. AT&T's ability to promote or retard the success of individual content providers could be used to confer market power on individual content providers favored by AT&T. AT&T could profit from the creation and exercise of such market power either through direct ownership of a favored content provider, or by obtaining payments from favored content providers in exchange for favorable treatment by Excite@Home and Road Runner. By exploiting its ''gatekeeper'' position in the residential broadband content market, AT&T could make it less profitable for unaffiliated content providers to invest in the creation of attractive broadband content, and reduce competition and restrict output in that market.

For these reasons, the United States concluded that the AT&T/MediaOne merger as proposed may substantially lessen competition, in violation of Section 7 of the Clayton Act, in the market for the aggregation, promotion, and distribution of residential broadband content.

Naturally, in emerging markets such as these, predictions about the way the market may develop in the future are far from certain. Nevertheless, the predictions and assumptions required to conclude that the proposed merger would present serious anticompetitive problems in the future are very reasonable ones. Moreover, the risks to the development of broadband industry posed by this merger are sufficiently grace that appropriate relief is warranted.

**III. Explanation of the Proposed Final Judgment**

*A. The Divestiture Requirement*

The proposed Final Judgment will preserve competition in the market for the aggregation, promotion, and distribution of broadband content by requiring defendants to divest their interest in ServiceCo no later than December 31, 2001. This divestiture is intended to ensure that Excite@Home and Road Runner (or any successor residential broadband service offered by Time Warner) will continue to be separate and independent of one another, thereby preventing the reduction or elimination of competition between them that otherwise would have resulted from AT&T's acquisition of MediaOne.

The divestiture requirements of the proposed Final Judgment direct defendants to divest their interest in ServiceCo, including their direct financial ownership interest and their role in ServiceCo's management, through one of three methods specified in Section IV.B. The first two methods specified in Section IV.B contemplate the defendants' exiting the ServiceCo partnership pursuant to the terms of the ServiceCo Operating Agreement entered into by the various ServiceCo partners. Should the defendants opt for a different means of divesting the ServiceCo interest, the third option in Section IV.B provides that the defendants may utilize this method only

if the United States provides its written consent.

Consistent with other antitrust cases involving mergers in which the United States seeks a divestiture remedy, this Final Judgment requires completion of the divestiture within the shortest time period reasonable under the circumstances. The United States normally requires the divestiture of physical assets within six months or less. The circumstances here are highly unusual in that under the ServiceCo Operating Agreement, other ServiceCo owners have contractual rights that may limit the drfendants' ability to divest the ServiceCo interest prior to December 31, 2001. Accordingly, the defendants are permitted until that date to complete the divestiture. However, if the other relevant ServiceCo owner(s) request the defendants to divest the ServiceCo interest before December 31, 2001, through one of the methods provided for in the Operating Agreement (and enumerated in Sections IV.B(1) and IV.B(2) of the proposed Final Judgment), the defendants are required to complete the divestiture at such earlier date. The proposed Final Judgment thereby effectively requires the defendants to divest their ServiceCo interest as soon as reasonably practicable. During the time that the defendants continue to hold the interest in ServiceCo, their ability to participate in the management and governance of ServiceCo will be restricted, pursuant to detailed requirements contained in Section VI of the Final Judgment which are discussed further below, in order to minimize the risk of interim harm to competition.

In requiring the divestiture specified in Section IV, the Final Judgment strives to prevent current Road Runner customers from having any loss of, or impairment of, cable modem service by ensuring that both the principal ServiceCo partners can continue to offer cable modem service. Accordingly, Section IV.A permits the defendants to retain assets used solely or predominantly to provide service to MediaOne cable customers and Section IV.B(1) requires the defendants to consent to Time Warner purchasing the remaining assets (*e.g.,* assets that do not automatically revert to the control of either the defendants or Time Warner, such as, potentially, ''national'' assets) at fair market value. The defendants are also permitted to lease capacity on those assets and transitional support services at fair market value until June 30, 2002. The proposed Final Judgment thereby should realize its competitive objectives without any unnecessary adverse interim effects on end users.

*B. Limitations on Subsequent Agreements*

The divestiture requirements of the proposed Final Judgment are intended to ensure that Excite@Home and ServiceCo continue to operate separately and independently from one another. The ServiceCo joint venture affected actual or potential competition between MediaOne and Time Warner in a variety of ways. That joint venture is a mechanism through which MediaOne and Time Warner jointly provide residential broadband service, rather than providing such service separately and potentially in competition with one another. Similarly, the ServiceCo venture is a mechanism through which MediaOne and Time Warner jointly control negotiations with content providers over the terms under which ServiceCo will provide aggregation, promotion, and distribution of broadband content. AT&T's entry into this type of partnership with Time Warner (through its acquisition of MediaOne's ServiceCo interests) would pose substantial risks to competition because of AT&T's significant position (through Excite@Home) in the provision of residential broadband service and the aggregation, promotion, and distribution of broadband content.

Even if AT&T divests its interest in the ServiceCo joint venture, however, those risks to competition could be re-created through contractual arrangements between AT&T and Time Warner that would have competitive effects imilar to the effects of the ServiceCo joint venture. In order to prevent this, and to ensure that the divestiture remedy achieves its purpose, the proposed Final Judgment restricts AT&T's ability to enter into certain types of contractual or other arrangements with Time Warner for a period of two years after the divestiture of the ServiceCo interest.[1] The defendants are required to obtain the prior written consent of the Department of Justice before entering into three categories of agreements defined in Section V. First, prior approval is required for agreements through which defendants and Time Warner would jointly offer or provide a residential broadband service. Second, prior approval is required for agreements that would have the purpose or effect of preventing either the defendants or Time Warner from offering or providing a residential broadband service. Third, prior approval is required for agreements that would have the purpose or effect of (a) preventing defendants or Time Warner from including any content, services, capabilities, or features in any cable modem services offered by either the defendants or Time Warner, or (b) preventing the defendants from granting preferential treatment in any of their cable modem services to content, services, capabilities, or features offered by others.

The Department will have thirty days to review agreements submitted pursuant to Section V and will consent to proposed agreements if it determines, in its sole discretion, that the arrangement will not substantially lessen competition between AT&T and its Affiliates and Time Warner in any market. The Department's determination regarding any agreement submitted for review will be final unless the Court, based on an application by the defendants, concludes that the Department abused its discretion in refusing to consent to an agreement.

The requirements of Section V reflect a conclusion that certain categories of agreements could have anticompetitive effects, but not a conclusion that such agreements necessarily would have competitive effects. By virtue of their respective businesses in the operation of cable systems, the provision of residential broadband service, the provision of broadband content, and the provision of aggregation, promotion, and distribution of broadband content, AT&T and Time Warner may enter into a variety of commercial arrangements that pose no significant risk to competition, even though such arrangements are subject to the prior approval requirements of Section V. It is also possible that certain agreements between AT&T and Time Warner that are not subject to the prior approval requirements might have anticompetitive effects. The provisions of Section V reflect a balancing of the need to provide an effective means of preventing anticompetitive agreements while minimizing interference with legitimate and procompetitive commercial arrangements. The prior approval requirements do not limit in any way the ability of the United States to initiate enforcement actions under the antitrust laws to challenge agreements, whether or not such agreements are subject to the prior approval requirements, and whether or not the United States has granted its approval under the terms of the Final Judgment.

[1] The Final Judgment defines Time Warner to include any ''legal entity that is subject to a merger agreement with Time Warner, Inc., and that would be included within this definition when such agreement is consummated''. Therefore, the restrictions in Section V will apply to agreements involving the defendants and AOL, as well as the entity resulting from the merger of America Online and Time Warner if that proposed merger closes.

*C. Other Provisions of the Decree*

Section VI contains important requirements concerning the operation of Road Runner prior to divestiture of the interest in ServiceCo. The purpose is to prevent any coordination or collusion between Road Runner and Excite@Home during the limited period of time that AT&T has equity and management interests in both. Section VI.A lays out the basic rule that the defendants shall take all necessary steps to ensure that the management of the ServiceCo interest will be kept separate and apart from the operation of other AT&T businesses, including Excite@Home, and that all competitively sensitive information of the ServiceCo and AT&T's other businesses are also kept separate.

Although there are certain decisions of ServiceCo which the defendants need to be able to participate in during the period prior to divestiture in order to protect their legitimate interests, in particular that of providing service to their end user cable customers, there are certain categories of decisions for which there is no strong reason the defendants need to be involved and, indeed, ones in which their involvement could create anticompetitive consequences. Accordingly, Section VI.B delineates three specific categories of ServiceCo decisions which defendants are prohibited from participating in or influencing. The first of these involves decisions regarding ServiceCo offering service to customers other than defendants' or Time Warner's cable systems. It is possible that Road Runner may want to expand service to other cable systems or over other means of broadband access such as DSL. Because Excite@Home could potentially be a competitor to Road Runner for these customers, AT&T might have an incentive to hinder Road Runner's efforts to serve these customers. The Final Judgment bars AT&T from being able to hinder any such efforts by Road Runner. The second category of decisions in which AT&T is barred from participating are those regarding content or services provided to ServiceCo subscribers. A major competitive concern outlined in the Complaint is that AT&T would be able to coordinate the actions of Excite@Home and Road Runner in dealing with content providers; by preventing AT&T from participating in any Road Runner content decisions, this risk is minmized. Because Time Warner might have incentives, and in the absence of AT&T being able to exercise its management rights the ability, to strike deals between ServiceCo and Time Warner that would be extremely favorable to Time Warner and its content, there is an exception in this provision that allows AT&T to participate in content decisions involving Time Warner content. The final prohibition in this Section prevents defendants from impeding ServiceCo's ability to obtain capital from other ServiceCo equity holders. This is to prevent AT&T from being able to undermine ServiceCo as a competitive force by blocking its access to capital.

Section VI.C specifies the manner in which AT&T must manage its ServiceCo interest. It requires the appointment of a person or persons (''the Appointee'') who will manage AT&T's interest in ServiceCo and be responsible for compliance with the separation requirements of Section VI subject only to review and direction by four senior AT&T officers and its Board of Directors. It also contains a number of specific provisions regarding communications and the sharing of non-public information that will help to prevent sensitive ServiceCo competitive information from being provided to the rest of AT&T.

In order to ensure compliance with the Final Judgment, Section VII gives the United States various rights, including the ability to inspect defendants' records, to conduct interviews and take sworn testimony of defendants' officers, directors, employees and agents, and to require defendants to submit written reports. These rights are subject to legally recognized privileges, and any information the United States obtains using these powers is protected by specified confidentiality obligations which permit sharing of information with the FCC under customary protective order issued by that agency or a waiver of confidentiality.

The Court retains jurisdiction under Section VIII, and Section IX provides that the proposed Final Judgment will expire on the tenth anniversary of the date of its entry, unless extended by the Court.

## IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages that the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

## V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiff and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time to entry. The comments and the responses of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Donald J. Russell, Chief, Telecommunications Task Force, Antitrust Division, United States Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides, in Section VIII, that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate to carry out or construe the Final Judgment, to modify any of its provisions, to enforce compliance, and to punish any violations of its provisions.

## VI. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, seeking an injunction to block consummation of the AT&T/MediaOne Merger and a full trial on the merits. The United States is satisfied, however, that the divestiture of the interest in ServiceCo and other relief contained in the proposed Final Judgment will preserve competition in the market for aggregation, promotion,

and distribution of residential broadband content. This proposed Final Judgment will also avoid the substantial costs and uncertainty of a full trial on the merits on the violations alleged in the compliant. Therefore, the United States believes that there is no reason under the antitrust laws to proceed with further litigation if divestiture of the interest in ServiceCo is carried out in the manner required by the proposed Final Judgment.

**VII. Standard of Review Under the APPA for Proposed Final Judgment**

The APPA requires that proposed consent judgments in antitrust cases brought by the United States by subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' In making that determination, the court may consider:

> (1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
>
> (2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e) (emphasis added). As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft,* 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

In conducting this inquiry, ''[t]he Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' [2] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

*United States* v. *Mid-America Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981); see also Microsoft, 56 F.3d at 1460–62. Precedent requires that

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[3]

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'' *United States* v. *American Tel. & Tel Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982), aff'd sub nom., *Maryland* v. *United States,* 460 U.S. 1001 (1983) (quoting Gillette Co., 406 F. Supp. at 716); *United States* v. *Alcan Aluminum, Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985).

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Since ''[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that court ''is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States might have but did not pursue. Id.

**VIII. Determinative Documents**

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposal Final Judgment. Consequently, the United States has not attached any such materials to the proposed Final Judgment.

Respectfully submitted,
Joel I. Klein, Assistant Attorney General. Donna E. Patterson, Deputy Assistant Attorney General. Constance K. Robinson, Director of Operations. Donald J. Russell, Telecommunications Task Force.Claude F. Scott, Jr. (DC Bar No. 414960). Lauren Fishbein. Lawrence M. Frankel. Peter A. Gray. Juanita Harris. Yvette F. Tarlov. Trial Attorneys, U.S. Department of Justice, Antitrust Division, Telecommunications Task Force, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5621.

Dated: May 25, 2000.

**Certificate of Service**

I hereby certify that copies of the foregoing Plaintiff United States' Competitive Impact Statement, were served via U.S. Mail, first class postage prepaid, on this 25th day of May 2000 upon each of the parties listed below:

Attorney for AT&T Corp: Mark Rosenblum, AT&T Corp., 295 North Maple Avenue, Basking Ridge, New Jersey 07920; David Carpenter, Sidley & Austin, Bank One Plaza, Chicago, IL 60603.

Attorney for MediaOne Group, Inc.: Sean Lindsay, MediaOne Group, Inc., 188 Inverness Drive, West, Suite 600, Englewood, CO 80112.

Claude F. Scott, Jr.,

*Counsel for the United States.*

[FR Doc. 00–15591 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–11–M

[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.,* 406 F. Supp. 713, 715 (D. Mass. 1975). A ''public interest'' determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538.

[3] Bechtel, 648 F.2d at 666 (emphasis added); see BNS, 858 F.2d at 463; *United States* v. *National Broadcasting Co.,* 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); Gillette, 406 F. Supp. at 716. *See* also Microsoft, 56 F.3d at 1461 (whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice pursuant to the National Cooperative Research and Production Act of 1993—Infiniband Trade Association

Notice is hereby given that, on January 21, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), System I/O, Ind. dba InfiniBand Trade Association (''InfiniBand'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are 3Com, Santa Clara, CA; AANetcom, Inc., San Jose, CA; Adaptec Inc., Milpitas, CA; Alacrity Communications, Inc., Milpitas, CA; American Megatrends Inc., Fremont, CA; Amphenol, Hamden, CT; Analog Devices, Newbury, United Kingdom; Ancor Communications Inc., Eden Prairie, MN; Auspex Systems, Santa Clara, CA; Chip2Chip, San Jose, CA; Cisco Systems, San Jose, CA; CMD Technology, Inc., Irvine, CA; Compaq Computer Corporation, Houston, TX; Crossroads Systems, Inc., Austin, TX; Dell Computer, Round Rock, TX; Diancom, Inc., Cupertino, CA; Distributed Processing Technology, Maitland, FL; DotHill Systems Corp., Carlsbad, CA; Emulex Corporation, Costa Mesa, CA; Essential—ODS Networks, Albuquerque, NM; Fairchild Semiconductor, South Portland, ME; FCI Electronics, Inc., Contoocook, NH; Finisar Corporation, Sunnyvale, CA; Force Computers, Neublberg/Munchen, Germany; Foxconn, Dillsburg, PA: Fujitsu Computer Products of America, Inc., San Jose, CA; Fujitsu Limited, Kohoku-ku, Yokohama, Japan; Fujitsu-Siemens Computers, Bracknell, Berks, United Kingdom; Gadzoox Networks, Inc., Placentia, CA; Hewlett-Packard Company, Cupertino, CA; Hirose Electric, Simi Valley, CA; Hitachi, Ltd., Ebina-shi, Japan; Honeywell International, Richardson, TX; HotRail Incorporated, San Jose, CA; IBM Corporation, Research Triangle Park, NC; INH Semiconductor, Cedar Park, TX; Intel Corporation, Hillsboro, OR; Interphase Corporation, Dallas, TX; IO Authority, San Francisco, CA; JNI Corp., San Diego, CA; LSI Logic, Colorado Springs, CO; Lucent Technologies Inc., Richardson, TX; Marathon Technologies Corp., Boxborough, MA; McData Corporation, Broomfield, CO; Mellanox Technologies, Santa Clara, CA; Microsoft Corporation, Redmond, WA; Molex Inc., Lisle, IL; Myricom, Inc., Arcadia, CA; NEC Corporation, Tokyo, Japan; Network Appliance Inc., Sunnyvale, CA; Network Elements, Inc., Beaverton, OR; Nortel Networks, Nepean, Ontario, Canada; Orca Systems, Watertown, MA; PLX Technology, Inc., Sunnyvale, CA; Qlogic, Costa Mesa, CA; Quantum, Milpitas, CA; Seagull Semiconductor, Herzella, Israel; Silicon Graphics, Mt. View, CA; Storage Networks, Inc., Waltham, MA; Stratus Computer Systems, Maynard, MA; Sun Microsystems, Burlington, MA; Syskonnect, Archern, Germany; Tektronix, Beaverton, OR; Texas Instruments, Dallas, TX; Tundra Semiconductor Corporation, Kanata, Ontario, Canada; Western Digital, San Jose, CA; and Xilinx, Inc., San Jose, CA. The nature and objectives of the venture are to be a forum for the development of specifications and related activities that: (i) support the creation of interoperable, scalable and reliable I/O products, computer systems, and computer technologies; (ii) are based on a channel-oriented, switched fabric communication technique that addresses the needs of a broad range of computer systems and computer technologies (including, but not limited to, both low-cost, volume-oriented computer systems and computer technologies and high-end enterprise class computer systems and computer technologies); and (iii) are limited to those elements required to enable, promote, or improve communications, interoperability, and connectivity between products developed in compliance with the specifications. InfiniBand's specific purpose includes promoting its specifications as industry-wide standards; issuing design guidelines and programming guidelines relating to its specifications; presenting activities that promote the use of the specifications; and providing for the licensing or publication of the specifications on reasonable and non-discriminatory terms. InfiniBand's specifications may include information directing specific implementations only as necessary to enable, promote and/or improve communications, interoperability, and connectivity between products developed in compliance with the specifications.

In furtherance of the above stated specific purpose, InfiniBand may, among other things, engage in theoretical analysis; experimentation; systematic study; research; development; testing; the extension of investigative findings or theory of a scientific or technical nature into practical application; the collection, exchange and analysis of research or production information; and any combination of the foregoing.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15612 Filed 6–20–00; 8:45 am]

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## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—The ATM Forum

Notice is hereby given that, on January 10, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The ATM Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ellacoya Networks, Inc., Merrimack, NH; NorthPoint Communications, San Frncisco, CA; Calix Networks, Petaluma, CA; Jetstream Communications, Inc., Los Gatos, CA; Onex Communications Corporation, Bedford, MA; Oresis Communications, Inc., Portland, OR; and Westwave Communications, Santa Rosa, CA have been added as parties to this venture. The following members have changed their names: Omnia Communications, Inc. to Ciena Corporation, Marlboro, MA; Future Communications Software to Future Software Private Ltd., Nandanam, Madras, India; Mitel Corporation to Mitel Semiconductor, Kanata, Ontario, Canada; Broadband Technologies, Inc. to Pliant Systems Inc., Durham, NC; Telefonica I+D to Telefonica de Espana, Madrid, Spain. Also, the following four auditing members have upgraded to principal members: ADTRAN, Inc., Huntsville, AL; Altera Corporation, High Wycombe, Buckinghamshire, United Kingdom; ANDA Networks, Inc., Santa Clara, CA; and Efficient Networks, Dallas, TX.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open, and The ATM Forum intends to file additional written notification disclosing all changes in membership.

On April 19, 1993, The ATM Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 2, 1993 (58 FR 31415).

The last notification was filed with the Department on October 12, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15598 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies (''CWRT'') Sustainability Metrics Project

Notice is hereby given that, on October 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Center for Waste Reduction Technologies (''CWRT'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Center for Waste Reduction Technologies, New York, NY; America Institute of Chemical Engineers, New York, NY; Arthur D. Little, Inc., Cambridge, MA; Dow Chemical Co., Midland, MI; Eastman Chemical Co., Kingsport, TN; Eastman Kodak Co., Rochester, NY; E.I. du Pont de Nemours & Co., Wilmington, DE; Merck & Company, Whitehouse Station, NJ; Minnesota Mining & Manufacturing Co., St. Paul, MN; Monsanto Company, St. Louis, MO; Owens Corning Co., Toledo, OH; Rohm & Haas Co., Philadelphia, PA; and SmithKline Beecham Corp., King of Prussia, PA. The nature and objectives of the venture are to develop a set of tangible metrics to assess the economic and environmental impact of business operations. The metrics are intended to allow the users to examine various options of chemistry, process, product and even product line to determine their relative contributions to sustainability. These metrics being developed by the project will cover mass and energy intensity, pollutants dispersion and the use of water, renewables and recyclables.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15601 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium, Inc.

Notice is hereby given that, on October 14, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), CommerceNet Consortium, Inc. (the ''Consortium'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, BT Squared Technologies, Inc. has changed its name to 2order.com, Atlanta, GA. Also, Aventura Systems ASA, Oslo, Norway has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on August 31, 1994 (59 FR 45012).

The last notification was filed with the Department on September 23, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 2, 1999 (64 FR 67588).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15605 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Gas Utilization Research Forum (''GURF'')

Notice is hereby given that, on February 4, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Gas Utilization Research Forum (''GURF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SBM Offshore Systems, Monaco, Cedex, FRANCE has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Gas Utilization Research Forum (''GURF'') intends to file additional written notification disclosing all changes in membership.

On December 19, 1990, Gas Utilization Research Forum (''GURF'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 16, 1991 (56 FR 1655).

The last notification was filed with the Department on November 16, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15597 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Interoperability Consortium, Inc.

Notice is hereby given that, on January 13, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Interoperability Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are American Express Travel Related Services Company, Inc., New York, NY; and Visa International Services Association, Foster City, CA. The nature and objectives of the venture are to promote and accelerate the acceptance and use of the File Structure Specification of a Travel and Entertainment Multi-Application Smart Card as a worldwide open standard in the smart card industry and otherwise to promote and accelerate the creation of global interoperability for multiple application smart cards.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15606 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on October 27, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACE Associated Compiler Experts Br., Amsterdam, The Netherlands; Ericsson, Alvsjo, Sweden; Esmertec ag, Zurich, Switzerland; Swiss Federal Institute of Technology, Zurich, Switzerland; O'Reilly Institute, Trinity College, Dublin, Ireland; Ralph Boroughs, Chattanooga, TN; Lois Goldthwaite, Claygate, Surrey KTIO OSA, United Kingdom; Samuel E. Riffle, Providence, RI; and Fridtjof Siebert, Stuttgart, Germany have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15603 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—J Consortium, Inc.

Notice is hereby given that, on January 20, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), J Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Avanti Systems, Inc., Issaquah, WA; Brionregina SRL, Roma, Italy; Dera Bincleaves, Weymouth, United Kingdom; IniNet AG, Reinach, Switzerland; SAAB Combitech Systems AB, Jonkoping, Sweden; The University of Kent at Canterbury, Canterbury, Kent, United Kingdom; University of Wales Bangor, Bangor, Gwynedd, United Kingdom; Vidiom Systems Corporation, Boulder, CO; WyNpro Solutions, LLC, San Diego, CA; and Florian Liekweg, Karlsruhe, Germany have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and J Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On August 9, 1999, J Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15175).

The last notification was filed with the Department on October 27, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15607 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program (''NSRP'')

Notice is hereby given that, on January 5, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Shipbuilding Research Program (''NSRP'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cascade General, Inc., Portland, OR has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Shipbuilding Research Program (''NSRP'') intends to file additional written notification disclosing all changes in membership.

On March 13, 1998, National Shipbuilding Research Program (''NSRP'') filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4708).

The last notification was filed with the Department on October 1, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15604 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum (''PERF'')

Notice is hereby given that, on February 4, 2000, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), Petroleum Environmental Research Forum (''PERF'') Project No. 98–04, titled, ''Understanding, Predicting and Treating Water Soluble Organic Contaminants in Produced Water Discharges'', has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) The identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Chevron Research and Technology Company, Richmond, CA; Den Norske Stats Oljese Skap a.s., Trondheim, Norway; Phillips Petroleum Co., Bartlesville, OK; and Shell International Exploration and Production, Inc., Houston, TX. The nature and objectives of the venture are to compile research projects directed to develop, apply and transfer technology and information which will assist in understanding, predicting and treating water soluble organic contaminants in produced water discharges.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15599 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute (''SwRI''): Clean Diesel III

Notice is hereby given that, on February 9, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute (''SwRI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Pure Energy Corporation, New York, NY has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute (''SwRI'') intends to file additional written notification disclosing all changes in membership.

On January 12, 2000, Southwest Research Institute (''SwRI'') filed its original notification pursuant to Section 6(a) of the Act. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15596 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telematics Suppliers Consortium, Inc.

Notice is hereby given that, on November 3, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Telematics Suppliers Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hitachi Ltd., Tokyo, Japan; and LoJack Corporation, Dedham, MA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Telematics Suppliers Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 12, 1999, Telematics Suppliers Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The last notification was filed with the Department on August 19, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15602 Filed 6–20–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Test & Diagnostics Consortium, Inc.

Notice is hereby given that, on November 12, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Test & Diagnostics Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Advanced Testing Technologies, Inc., Hauppauge, NY; Aeroflex Incorporated, Plainview, NY; Allied Signal Aerospace Canada, Ontario, Canada; DME Corporation, Fort Lauderdale, FL; Freightliner Corporation, Portland, OR; ManTech Test Systems, Incorporated, Fairfax, VA; PEI Electronics Inc., Huntsville, AL; Racal Instruments, Inc., Irvine, CA; Systems & Electronics Inc. (Subsidiary of ESCO), St. Louis, MO; Teradyne, Inc., Boston, MA; and Virginia Panel Corporation, Waynesboro, VA. The nature and objectives of the venture are to conduct joint research activities intended to standardize and improve test and diagnostics systems and

equipment used by the Defense, Commercial Airline, Automobile, Trucking, Railroad, Satellite, Maritime Shipping, Medical Device, Telecommunications and Computer industries.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15600 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—VSI Alliance

Notice is hereby given that, on January 27, 2000, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), VSI Alliance has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3Com Corporation, Santa Clara, CA; Jean-Paul Calvez (individual member), Nantes, France; Pai Chou (individual member), Irvine, CA; ControlNet, Inc., Milpitas, CA; DSP Group, Inc., Herzlia, Israel; Element 14, Inc., Cambridge, United Kingdom; and IDEC (IC Design Education Center), Taejon, Republic of Korea have been added as parties to this venture. Also, Analog Circuit Technology, San Diego, CA; The Boeing Company, Seattle, WA; Chip & Chip, Inc., Santa Clara, CA; IMS—Integrated Measurement Systems, Inc., Beaverton, OR; Iprias Ltd., Bristol, United Kingdom; Maingate Electronics, Inc., Yokohama, Kanagawa, Japan; Metis Associates, Inc., Sunnyvale, CA; NeoParadigm Labs, Inc., San Jose, CA; Sagantec North America, Inc., Fremont, CA; Silicon Access Technology, San Jose, CA; SiPCore, Inc., San Jose, CA; Stellar Semiconductor, San Jose, CA; and VLSI Technology, Inc., San Jose, CA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and VSI Alliance intends to file additional written notification disclosing all changes in membership.

On November 29, 1996, VSI Alliance filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 4, 1997 (62 FR 9812).

The last notification was filed with the Department on October 8, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–15608 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–11–M**

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

**[OJP (OJJDP)–1276]**

### Program Announcement for Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement (The Deborah Ann Wysinger Memorial Program)

**AGENCY:** Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for Training and Technical Assistance for National Innovations to Reduce Disproportionate Minority Confinement. The purpose of the training and technical assistance is to assist States as they plan, implement, and monitor their disproportionate minority confinement (DMC) initiatives. Addressing DMC is the fourth core protection in the State plan requirements under the Formula Grants program established in Part B of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended (Pub. L. 93–415; 42 U.S.C. 5663). Section 223(a)(23) provides that States participating in the Formula Grants program must take steps to address the issue of DMC if it is found to exist in the State. OJJDP is issuing this competitive solicitation for innovative proposals to implement a national planning, training, technical assistance, and information dissemination initiative to assist States and local jurisdictions to address DMC as required by the JJDP Act.

**DATES:** Applications must be received by August 7, 2000.

**ADDRESSES:** Interested applicants can obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.html#kit. (See ''Format'' and ''Delivery Instructions'' later in this announcement for instructions on application standards and the address to which applications must be sent.)

**FOR FURTHER INFORMATION CONTACT:** Gail Olezene, Program Manager, Office of Juvenile Justice and Delinquency Prevention; Phone: 202–305–9234 [This is not a toll-free number].

**SUPPLEMENTARY INFORMATION:**

#### Purpose

The purpose of this program is to provide States, territories, and the District of Columbia with training and technical assistance support to address disproportionate minority confinement (DMC), the subject of the fourth core protection of the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended. The other core protections are deinstitutionalization of status offenders, removal of juveniles from adult jails and lockups, and sight and sound separation of juveniles from adult offenders in secure institutions.

#### Background

The 1992 amendments to the Juvenile Justice and Delinquency Prevention (JJDP) Act of 1974, as amended, required States to take steps to address DMC as a condition for receipt of 25 percent of the State's Formula Grants program allocation, thus creating the fourth core protection of the JJDP Act (Section 223(a)(23)). The Office of Juvenile Justice and Delinquency Prevention (OJJDP) issued regulations (28 CFR 31.303 (j)) requiring States participating in the Formula Grants program to collect and analyze data on DMC. States participating in the Formula Grants program address the DMC issue in three phases: identifying the extent to which DMC exists, assessing the reasons for DMC, and developing intervention plans to address those identified reasons. An OJJDP grant program was developed in 1991 to demonstrate model approaches in five competitively selected pilot States (Arizona, Florida, Iowa, North Carolina, and Oregon). Funds were also awarded to a national contractor to provide technical assistance to the pilot States and other States, to evaluate their efforts, and to share relevant information nationwide. By 1995, awards had been made to support 12 demonstration projects to test innovative interventions designed by States and local communities to address DMC.

Additional technical assistance and training were initiated in 1996 with the award of a cooperative agreement to develop curriculum and technical assistance materials to assist States in meeting the requirements of DMC. This new solicitation will build upon the products developed during the first phase of this national support effort and provide the structure and materials for intensive assistance to States. In addition to the National Training and Technical Assistance Project, initially funded in 1996, OJJDP supports Building Blocks for Youth, a program that approaches DMC from a comprehensive set of concepts (research, official decisionmaking, direct advocacy, constituency building, and communications strategies). This project, being implemented by the Youth Law Center, is funded in collaboration with the following national foundations: Edna McConnell Clark, California Wellness, Garland Howland Shaw, Rockefeller, John D. and Catherine T. MacArthur, William T. Grant, Annie E. Casey, Ford, Surnda, and the Public Welfare Foundation. Additional funders include the Center on Crime, Communities and Culture of the Open Society Institute and the Bureau of Justice Assistance in the Office of Justice Programs.

In response to the requirements of section 223(a)(23), States are implementing or developing intervention plans to address DMC that include such elements as:

- Examining decisionmaking policies and practices of police, prosecutors, courts, and probation agencies to identify where racial disparities occur in the system.
- Increasing cultural diversity of program staff.
- Developing guidelines, such as detention criteria, that reduce or eliminate racial disparities.
- Providing support training for juvenile justice system personnel.
- Developing, supporting, and expanding delinquency prevention programs.
- Increasing the availability and improving the quality of diversion programs.
- Developing community-based alternatives to secure detention and incarceration.
- Reviewing and revising existing juvenile justice system policies and procedures.

In spite of these efforts, overrepresentation of minority youth continues at levels more than twice the proportion of minority juveniles ages 12 to 17 in the general population and research findings, while not completely consistent, continue to document that data from most jurisdictions across the country show that minority youth are overrepresented within the juvenile justice system, particularly in secure facilities (Office of Juvenile Justice and Delinquency Prevention, 1999). These data further suggest that minority youth are more likely to be placed in public secure facilities, while white youth are more likely to be housed in private facilities, both secure and nonsecure, or diverted from the juvenile justice system. The 1999 OJJDP Bulletin *Minorities in the Juvenile Justice System* summarizes research documenting that differences in the offending rates of white and minority youth cannot explain the minority overrepresentation in arrest, conviction, and incarceration counts. The Bulletin also documents substantial evidence that minority youth are often treated differently from nonminority youth in the juvenile justice system, with approximately two-thirds of the studies examined showing that racial and ethnic status influences decisionmaking in the juvenile justice system.

While juvenile involvement in violent crimes is down and continuing to decrease, with less than one-half of 1 percent of juveniles in the United States arrested for a violent offense each year, more than 40 States have changed their laws since 1995 to require or permit increased prosecutions of juveniles in the criminal justice system (Youth Law Center, 1999b). In virtually every State, the great weight of these punitive justice policies falls disproportionately on minority youth (Youth Law Center, 1999b). Black juveniles are overrepresented at all stages of the juvenile justice system compared with their proportion in the population (Office of Juvenile Justice and Delinquency Prevention, 1999). For example, while African American youth ages 10 to 17 are only 15 percent of the U.S. adolescent population, they account for 26 percent of juvenile arrests, 32 percent of delinquency referrals to juvenile courts, 41 percent of juveniles detained in delinquency cases, 46 percent of juveniles in correctional institutions, and 52 percent of juveniles transferred to adult criminal courts after judicial hearings (Youth Law Center, 1999b).

The picture in many States reinforces disparate treatment for minority youth in secure confinement. Black males are six times more likely to be admitted to State juvenile facilities for crimes against persons than their white counterparts and 30 times more likely to be detained for drug offenses than white males (Youth Law Center, 1999b).

*Juvenile Offenders and Victims: 1999 National Report* (Office of Juvenile Justice and Delinquency Prevention, 1999) further documents that minorities accounted for 34 percent of the juvenile population nationally and 67 percent of juveniles committed to public facilities nationwide—a proportion nearly twice that of their proportion in the juvenile population. Minority proportions were somewhat lower for youth committed to private facilities than to public facilities. In seven States, the minority proportion of the total population of juveniles in residential placement was 75 percent or greater.

OJJDP efforts to date to assist States in addressing minority overrepresentation have yielded important lessons, such as: systemic, broad-based interventions that have continuity are necessary to reduce DMC; and each jurisdiction must assess the magnitude, extent, and nature of the disparity and plan to address those findings holistically. OJJDP recognizes the need to foster further development, documentation, and dissemination of effective strategies through planning, training and technical assistance, information dissemination, community coalition building, practical and targeted resource tools, and public education.

To meet that need, OJJDP is issuing this competitive solicitation for innovative proposals to implement a 3-year national planning, training, technical assistance, and information dissemination initiative focused on disproportionate confinement of minority youth. An award of up to $300,000 will support this initiative in its first year.

**Goal**

To assist States and local jurisdictions to reduce the overrepresentation of minority youth in secure detention and correctional facilities, jails, and lockups by providing jurisdictions with knowledge and expert assistance that will enable them to effectively address DMC in varying stages of the implementation phase as required by the JJDP Act.

**Objectives**

The objectives of this training and technical assistance program are to:

- Identify key components of a State DMC strategic plan and develop tools and other materials that facilitate implementation of the plan.
- Develop and test effective assessment instruments that may be used by any State or jurisdiction in their ongoing data collection of DMC rates.
- Develop and utilize a full range of materials, curriculums, manuals, and

protocols that empower State program implementors to develop and implement effective programs, policies, and procedures that impact DMC.

• Develop and deliver information briefings to juvenile justice specialists, State Advisory Group (SAG) chairs, and selected OJJDP-funded grantees to raise levels of understanding about effective interventions and impediments to successful action.

• Assist key OJJDP grantees to incorporate DMC issues, practices, and policies into their training and education programs.

• Provide intensive technical assistance to assist States and local jurisdictions in developing the capacity to address and monitor DMC.

• Develop and disseminate public education and information materials that support advocacy of public and private interest groups in addressing DMC.

• Develop and disseminate uniform protocols for assessing problems to be addressed through technical assistance.

• Update and revise curriculums developed in the prior grant period to reflect changing assessments and needs.

• Identify and create an inventory of promising approaches that identify ''best practices'' for each key decision point in the juvenile justice system.

**Program Strategy**

OJJDP will make a single award under a cooperative agreement. The purpose of this award is to assist States and local units of government to systematically and strategically address the disproportionate confinement of minority youth over a 3-year period. The grantee will accomplish this by doing the following: (1) Develop a DMC strategic plan that States may modify for their use; (2) develop data collection protocols with guidelines for States and jurisdictions to use in their continuing assessment of the progress of their DMC program; (3) develop a flow chart from point of entry to final disposition identifying the key decision points within each State to assist in prioritizing their DMC efforts, given the range of factors that would impact on full implementation of their DMC plan; (4) identify other resources that may assist States as they plan for implementation; (5) create a trainers' database with potential trainers on DMC that can be disseminated to all States and territories; (6) develop a checklist for OJJDP grantees that aids in identification of factors that impact DMC services delivered throughout the juvenile justice system; (7) provide intensive technical assistance to 5 to 10 States to assist with their efforts to address and monitor DMC; (8) identify ''best practices'' in programming to reduce DMC for each key decision point in the juvenile justice system; and (9) develop a ''formula'' for collaboration that involves each of the major players needed to develop and implement an effective DMC initiative at both the State and local levels.

In addition to those identified above, the grantee will be responsible for the following deliverables over the 12-month project period.

• Implementation plan for this initiative.

• Diverse consultant pool with expertise in areas of community-based programming, public education, advocacy directly related to planning, systems change, collaboration, cultural sensitivity, juvenile justice issues, and other program areas as identified.

• Web site with online access to reference and referral resources.

• Consolidated inventory of training and technical assistance materials on DMC and an inventory of legislation that may impact DMC.

• Quarterly status reports in narrative form addressing the tasks accomplished, pending requests, and major objectives for the upcoming quarter.

• Annual report to include financial and programmatic overview.

• Coordination protocol to facilitate communication, shared planning, and scheduling of events related to the other OJJDP DMC grantees.

• Mechanism to inform States and local units of government of existing resources.

• Two workshops per program year for intensive technical assistance sites, and one for OJJDP grantees/contractors. The cost of materials, meeting space, and consultant fees will be paid by the grant.

• An inventory of promising approaches to address key decision points, unique to each State, that impact DMC.

• A review of previously developed curriculums for possible update or revision.

• A protocol to address the delivery of training and technical assistance to the States.

Modifications may be proposed regarding the deliverables if assessments reveal new or different issues or obstacles or if any are determined not to meet the previously outlined objectives as effectively and efficiently as an alternative approach would. Sufficient explanation should be provided to permit assessment of the merits of the proposed change.

**Guiding Principles**

Technical assistance and training will be developed consistent with the following principles:

• Support for empowerment of local communities to implement programs.

• Proactive and comprehensive planning.

• User-friendly and consumer-driven design.

• Commitment to uniform protocols for needs assessment, delivery of training and technical assistance, evaluation, tracking, and follow-up.

• Curriculum development based on adult learning theory and delivery of the curriculum within the context of an interactive structure.

• Coordination of effective and efficient use of expertise on a range of subject matter.

The organizational capability of the national grantee must include:

• An established track record in delivery of technical assistance and training to the 50 States and territories.

• Demonstrated capability to produce a range of general and specific technical resource materials that are user friendly, but professionally presented within short time frames.

• A base consultant pool of experienced and seasoned experts in juvenile and criminal justice as well as in culturally competent programing, civil rights legislation, and community consensus building.

• An accounting and management structure capable of supporting and supervising a number of consultants and experts providing onsite assistance throughout the Nation.

• Identification and assignment of this project, immediately following award of the cooperative agreement, to an expert manager with demonstrated expertise in juvenile justice, experience with State and local agency program delivery structures, expertise in design and delivery of training and technical assistance, and experience in working with politically sensitive issues.

• Demonstrated ability to easily move funds for expeditious procurement and payment.

• A reproduction capability or plans for contractual access to such capability.

• Demonstrated capability to produce quality products and to maintain established performance schedules within established timeframes.

**Scope of Work**

Applicants are expected to present a technical assistance design that incorporates these elements, while bringing innovation and cohesiveness to a strategy for the organization,

operation, and delivery of the training and technical assistance program.

**Eligibility Requirements**

OJJDP invites applications from public and private agencies, organizations, institutions, or individuals. Private, for-profit organizations must agree to waive any profit or fees. Proposals are invited from organizations with demonstrated experience in the management of a national training and technical assistance effort and the capability to undertake activities related to this solicitation.

**Selection Criteria**

The proposal will be evaluated on the organization's ability to develop the project design, project management, organizational capability, and the preparation of a summary budget with basic categories of expenditures. Site visits contribute to the overall assessment of the applicants' capability. OJJDP may conduct onsite interviews with the five organizations submitting the highest scoring applications for the purpose of confirming information provided in the proposal. A full application that addresses all the selection criteria listed below is required of applicants.

*Problems To Be Addressed (10 points)*

Given the complexity of this issue and the focus of this initiative, applicants must clearly communicate the perceived needs of the project and their approach to responding to the ever-changing environment that surrounds this issue. The applicant must further convey understanding of the expected results of this effort, possible obstacles to their achievement, and strategies to deal with them.

*Goals and Objectives (10 points)*

Applicants must provide succinct statements that demonstrate an understanding of the expected outcomes of each objective and elaborate on the methodology associated with the project tasks. The strategy to address each objective must be clearly defined and expressed in operational terms and be measurable.

*Project Design (30 points)*

Applicants must present a project design that constitutes a measurable approach to meeting the goals and objectives of this program. The design must include a detailed implementation plan with time lines for each significant objective and program element that is directly linked to the achievement of the results sought in the project. The design must indicate how the requirements of each project objective and deliverable will be met and measured and include a cohesive, well-developed plan for providing knowledge, products, and best practices to States and selected OJJDP grantees. Of major importance is the specification of how systematic technical assistance will be provided to a targeted group of States that have requested intensive technical assistance in meeting DMC plan requirements.

*Project Management (20 points)*

In addition to the basic project management structure, applicants should specifically describe coordination and collaboration efforts related to the project. Applicants' management structure and staffing must be adequate and appropriate for the successful implementation of the project. Competitiveness will be enhanced by applicants that can clearly demonstrate previous experience with culturally competent program efforts. Key personnel must be identified in the staffing pattern, along with resumes and a statement of availability. Assurances must be provided that they will be available to the project within a reasonable time following application. The core consultant pool must be identified, and resumes must be provided for these individuals along with a description of how they will be used.

*Organizational Capability (15 points)*

Applicants must describe the organizational capability to effectively manage a national technical assistance and training program. They should indicate where this program will be placed within the organization's structure and explain the efficacy of this placement.

*Budget (15 points)*

The budget should be planned over a 12-month project period. Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective for the activities to be undertaken.

**Format**

The narrative portion of this application must not exceed 30 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper, double spaced on one side of the paper in a standard 12-point font. These standards are necessary to maintain a fair and uniform standard among all applicants. If the narrative does not conform to these standards, the application will be ineligible for consideration.

**Award Period**

This project will be funded for 3 years in 1-year budget periods. Funding after the first budget period depends on grantee performance, availability of funds, and other criteria established at the time of the award.

**Award Amount**

Up to $300,000 is available to support award of a cooperative agreement to a single provider for the initial 1-year budget period.

**Catalog of Federal Domestic Assistance (CFDA) Number**

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.542. This form is included in the *OJJDP Application Kit*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. The *Application Kit* is also available online at www.ojjdp.ncjrs.org./grants/about.html#kit.

**Coordination of Federal Efforts**

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requiring applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

The term ''related efforts'' is defined for these purposes as one of the following:

1. Efforts for the same purpose (*i.e.,* the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (*e.g.,* to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

3. Services of some kind (*e.g.,* technical assistance, research, or evaluation) to the program or project described in the application.

**Delivery Instructions**

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Faxed or e-mailed applications will not be accepted. **Note:** In the lower left hand corner of the envelope you must clearly mark ''Training and Technical Assistance for National Innovations To Reduce Disproportionate Minority Confinement.''

**Due Date**

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. ET on August 7, 2000.

**Contact**

For further information contact Gail Olezene, Program Manager, Training and Technical Assistance Division, 202–305–9234, or send an e-mail inquiry to olezenec@ojp.usdoj.gov.

**References**

Community Research Associates. 1997. *Disproportionate Confinement of Minority Juveniles in Secure Facilities: 1996 National Report.* Champaign, IL: Community Research Associates.

Office of Juvenile Justice and Delinquency Prevention. 1999. *Minorities in the Juvenile Justice System.* Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Sickmund, M. and Snyder, H. 1999. *Juvenile Offenders and Victims: 1999 National Report.* Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Youth Law Center. 1999a. *Fact Sheet: The Federal Disproportionate Minority Confinement Mandate: Impact on African American and Latino Youth.* Washington, DC: Youth Law Center.

Youth Law Center. 1999b. *Fact Sheet: Punitive Policies Hit Minority Youth Hardest.* Washington, DC: Youth Law Center.

**John J. Wilson,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

[FR Doc. 00–15649 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Critical Issues in Managing Women Offenders

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Correction to solicitation due date.

**SUMMARY:** This announcement is to correct the due date in the above notice which was published on June 9, 2000 in the **Federal Register** on Page 36725 in the paragraph entitled: Deadline for Receipt of Applications. The correct due date is Monday, July 17, 2000.

Dated: June 15, 2000.

**Larry B. Solomon,**

*Deputy Director, National Institute of Corrections.*

[FR Doc. 00–15574 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–36–M**

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Descriptive Analysis of Community Corrections Strategies for Women Offenders

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Solicitation for a Cooperative Agreement.

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2000 for a cooperative agreement to develop a descriptive analysis of community corrections options for women offenders. The project will result in a state of the art publication which summarizes descriptive information on community based supervision of women offenders. The project is the second part of a two-phased effort to provide current, relevant information on gender responsive strategies for women offenders in the community. The first phase is a survey of correctional agencies to identify gender responsive approaches. $150,000 are available in FY 2000 for one cooperative agreement award for a fifteen month period for the descriptive analysis.

A cooperative agreement is a form of assistance relationship where the National Institute of Corrections is substantially involved during the performance of the award. An award is made to an organization that will, in concert with the Institute, develop the state of the art document on community based approaches for women offenders. No funds are transferred to state or local governments.

**Background**

The Community Corrections Division is engaged in a multi-year effort to develop current, relevant information on community-based supervision approaches designed specifically for women defendants and offenders. These approaches may be specialized caseloads or supervision strategies, women-only interventions or groups, a women offender track in a larger program option (such as a separate track in a day reporting center), residential programs, and others. The distinctive feature of these approaches will be a purposeful design to improve outcomes for women in community settings by addressing their specific characteristics, circumstances and needs.

**The Two-Part Project**

1. The NIC Information Center is conducting the first part of the project, a survey of community based programs for women. The purpose of the survey is to develop a national directory of gender specific approaches employed as pretrial supervision and sentencing options. Directory entries will include the program name, a brief description of the approach or program, and contact information. The survey cover letter and instrument may be downloaded from the NIC website. (Click on ''What's New,'' then, ''Miscellaneous,'' to find the entry: Research on Specialized Programs for Women in Community Corrections.) The survey was mailed to approximately 230 State and local corrections agencies in early May, 2000. Many of these agencies made further distribution to local offices and programs.

2. The second part of the project is a descriptive analysis of the different types of approaches identified by the survey. It is the central purpose of this solicitation. The cooperative agreement awardee will take the survey findings—the supervision approaches and programs listed and profiled in the directory—and collect more detailed information through telephone interviews and on-site visits. The work will result in a publication describing the state of the art in community-based supervision of women offenders. It will pay particular attention to programs which collect evaluative information (both process and outcome) and those which employ an assessment component specifically developed for women. The anticipated award date of

the cooperative agreement is September 1, 2000.

The national directory (Part 1) also will serve the interests of a new venture in the development of effective options for women offenders: the U.S. DOJ, Office of Justice Program's (OJP) initiative called the Mother-Child Community Corrections Project. The Project will establish a resource center for information and support on the development of community-based residential programs for mothers and their children (as distinct from a prison nursery program). It is the project's hope that these programs will serve as alternatives to jail or prison sentences for women with children. It is a collaborative venture between OJP and two service providers: the Center for Effective Public Policy and the International Community Corrections Association. The results of the NIC national directory project in the area of residential programs for women and their children will be turned over to this new Center for further development.

There are many reasons why the information from this two-part effort is critically important.

• First, most of the available information on women offenders and current program options is on women in custody settings. Very little is known about the range of specialized approaches in the community, in part, because these programs are much harder to find. Many credible efforts are managed and funded entirely on a local basis, and through joint arrangements with other service agencies. In 1991, the National Council on Crime and Delinquency conducted a survey of community corrections programs for women for NIC. This earlier survey focused primarily on programs operated by private, non profit organizations. While the publication, Female Offenders in the Community: An Analysis of Innovative Strategies and Programs, September, 1992, is very useful, many of the programs described are no longer operating. Also, there remains a serious gap in our understanding of strategies employed by public probation, parole and community corrections agencies.

• The survey results will support networking among practitioners interested in creating or refining approaches that are gender responsive to women. Agency administrators, mid-level supervisors and staff working with women offenders often feel isolated and frustrated. This can be due to the constant need to justify doing something''equal but different'' for women in corrections where fair, consistent and gender-blind treatment remains an high value. It also results from the very real demands of working with women offenders, given the array of needs and complexity of issues they bring to the criminal justice system. A further part of the challenge of supervising women in the community is that these women also are clients of other agencies and systems with equally demanding requirements (substance abuse and mental health services, child protective custody, welfare to work, and others).

• Finally, NIC is engaged in a project to summarize multi-disciplinary research and practice on gender responsive principles for adult corrections from both operational and programmatic perspectives. Drs. Barbara Bloom and Barbara Owen are co-principal investigators on the NIC, three-year developmental effort. It is already clear that there is a dearth of evaluative research on women offender programs. Much more research is needed to understand what is gender-responsive practice and how it can be measured. The descriptive analysis will provide important information on promising approaches in the community which can serve as ''learning'' sites for more extensive evaluative research.

**Purpose**

The National Institute of Corrections is seeking an applicant organization or team which offers the required expertise in research, analysis and writing; publication design; and overall knowledge of women offenders and community corrections.

The purposes of the cooperative agreement are: To conduct a descriptive analysis of various types of supervision approaches identified by the NIC Information Center in the national directory, and to prepare a camera ready publication which summarizes the state of the art in community based approaches for women.

The work activity required by the Project includes, but is not limited to, the following.

• Consult with the NIC Program Manager on project approach and time line to assure progress and understanding of the scope of work.

• Conduct a review of the national directory entries to assess the adequacy of coverage of pretrial and sentenced options for women offenders.

• Thoroughly review existing material developed by other agencies to describe supervision and treatment approaches for women defendants and offenders.

• Conduct necessary planning with content experts to finalize the project methodology and objectives. (The above is subject to final approval by the Program Manager.)

• Coordinate research, analysis, and drafting findings of the descriptive analysis.

• Develop, edit, revise, and format the descriptive analysis publication.

• Submit preliminary draft for review by the Program Manager per the specified time line. Make revisions and submit second draft if requested.

• Prepare all materials using WordPerfect 7.0 or higher word processing software and submit final copies of all materials on 3.5″ computer disks (or zip drive disks) and in ''camera ready'' hard copy format (4 paper copies).

**Application Requirements**

Applicants must prepare a proposal that describes their plan to provide the project outcomes. The plan must include goals and objectives, methodology, deliverables, management plan, and a budget and budget narrative for the 15 month project. Applicants must identify their key project staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with the NIC Project Manager. Proposals are limited to twenty-five double-spaced pages in length, not including resumes, other addenda, and SF–424 forms.

**Authority:** Public Law 93–415.

**Funds Available**

Project funds are limited to a maximum total of $150,000 for both direct and indirect costs for 15 months. Funds may only be used for activities that are linked to the desired outcomes of the project.

All products from this funding effort will be in public domain and available to interested agencies through the National Institute of Corrections.

**Deadline for Receipt of Applications**

Applications must be received by 4:00 p.m. on Tuesday, August 1, 2000. They should be addressed to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534, Attention: Administrative Officer. Hand delivered applications can be brought to 500 First Street, NW, Washington, D.C. 20534. The Front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

**Addresses and Further Information**

Requests for the application kit, which consists of copies of this announcement, the required forms, and the survey of community corrections approaches for women offenders' cover letter and instrument, should be

directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Phyllis Modley (NIC Project Manager for this project) at the above address or by calling (800) 995–6423 or (202) 307–3106, extension 133, or by E-mail via *pmodley@bop.gov.* Application forms may also be obtained through the NIC website: http://www.nicic.org. (Click on ''What's New'' and then, ''Cooperative Agreements.'')

*Eligible Applicants:* An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

*Review Considerations:* Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number: 00C02.* This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

The Catalog of Federal Domestic Assistance number is: 16.602.

Dated: June 15, 2000.

**Larry B. Solomon,**

*Deputy Director, National Institute of Corrections.*

[FR Doc. 00–15575 Filed 6–20–00; 8:45 am]

**BILLING CODE 4410–36–M**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Washington State Standards; Request for Public Comment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Request for comment on Washington State amendments to: Safeguarding Power Transmission Parts Standard.

**SUMMARY:** This notice invites public comment on Washington's amendments to its Safeguarding Power Transmission Parts Standard comparable to the Federal final rule at 29 CFR 1910.219 as published in the **Federal Register** on May 29, 1971, and subsequent changes.

Where a State standard adopted pursuant to an OSHA-approved State plan differs significantly from a comparable Federal standard or is a State-initiated standard that contains significant differences, the Occupational Safety and Health Act of 1970 (the Act) requires that the State standard must be ''at least as effective'' in providing safe and healthful employment and places of employment. In addition, if the standard is applicable to a product distributed or used in interstate commerce, it must be required by compelling local conditions and not pose any undue burden on interstate commerce. OSHA, therefore, seeks public comment as to whether this Washington standard and amendments meet the above requirements.

**DATES:** Written comments should be submitted by July 21, 2000.

**ADDRESSES:** Written comments should be submitted to the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212.

**FOR FURTHER INFORMATION CONTACT:** Mike Shimizu, Director, Office of Public Affairs, U.S. Department of Labor, 1111 Third Avenue, Suite 930, Seattle, Washington 98101–3212. Telephone: (206) 553–7620.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The requirements for adoption and enforcement of safety and health standards by a State with a State plan approved under section 18(b) of the Act (29 U.S.C. 667) are set forth in section 18(c)(2) of the Act and in 29 CFR 1902, 1952.7, 1953.21, 1953.22 and 1953.23. OSHA regulations require that States respond to the adoption of new or revised permanent Federal standards by State promulgation of comparable standards within six months of OSHA publication in the **Federal Register** (29 CFR 1953.23(a)). A 30-day response time is required for State adoption of a standard comparable to a Federal emergency temporary standard (29 CFR 1953.22(a)(1)). Independent State standards must be submitted for OSHA review and approval. Newly adopted State standards must be submitted for OSHA review and approval under procedures set forth in 29 CFR part 1953, but are enforceable by the State prior to Federal review and approval.

Section 18(c)(2) of the Act provides that if State standards which are not identical to Federal standards are applicable to products which are distributed or used in interstate commerce, such standards must be required by compelling local conditions and must not unduly burden interstate commerce. (This latter requirement is commonly referred to as the ''product clause''.)

On January 26, 1973, notice was published in the **Federal Register** (38 FR 2421) of the approval of the Washington State plan and the adoption of Subpart F to Part 1952 containing the decisions.

The Washington plan provides for the adoption of State standards that are at least as effective as comparable Federal standards promulgated under section 6 of the Act. The Director of the Washington Department of Labor and Industries (the Director) is empowered to create, adopt, modify, and repeal rules and regulations governing occupational safety and health standards following public notice and a hearing in conformance with the State's Administrative Procedures Act. Public notice describing the subject matter of the proposed rule, and where and when the hearing will occur must be published in the State newspapers at least 30 days in advance of the hearing. The Director considers all recommendations by any member of the public in the promulgation process. Whenever the Director adopts a standard, the effective date is usually 30 days after the signing.

*Safeguarding Power Transmission Parts*

On its own initiative, the State of Washington has submitted by letters dated July 2, 1998, and December 17, 1999, from Michael A. Silverstein, Assistant Director, to Richard S. Terrill, Regional Administrator, a State standard for Safeguarding Power Transmission Parts. The State's initial submittal, a complete rewrite of the standard, was adopted on May 4, 1998, effective January 1, 1999, under Washington Administrative Order 97–11. The State's further revision of the standard was adopted on September 21, 1999, with an effective date of January 1, 2000, under Washington Administrative Order 99–23. The State standard is contained in Chapter 296–24 WAC, Part C. The original State standard for Safeguarding Power Transmission Parts, WAC 296–24–205, received OSHA approval on June 4, 1976 (41 FR 22655).

OSHA has determined that the State standard amendments for Safeguarding Power Transmission Parts are at least as effective as the comparable Federal standard, as required by Section 18(c)(2) of the Act. OSHA has also determined that there are major differences between the State and Federal standards. The State standard is performance-oriented and allows safeguarding by using enclosure guards, devices, safe

distances, or safe locations. The State standard allows the employer more flexibility in choosing guard materials that take advantage of current technology, but provide equivalent protection. The State standard is also rewritten in plain language.

**B. Issues for Determination**

The Washington standard amendments in question are now under review by the Regional Administrator to determine whether they meet the requirements of section 18(c)(2) of the Act and 29 CFR parts 1902 and 1953. Public comment is being sought by OSHA on the following issues.

*At Least as Effective'' Requirement*

Washington's amendments to the Safeguarding of Power Transmission Parts Standard are comparable to the Federal final rule at 29 CFR 1910.219, Mechanical Power Transmission Apparatus. OSHA has evaluated the State's requirements in comparison to the respective OSHA standard requirements and to enforcement policy and has preliminarily determined that the State's amendments in question meet the ''at least as effective'' criterion on section 18(c)(2) of the Occupational Safety and Health Act. However, public comment on these issues is solicited for OSHA's consideration in its final decision on whether or not to approve theseWashington amendments.

*Product Clause Requirement*

OSHA is also seeking through this notice public comment as to whether the Washington standard amendments:

(a) Are applicable to products which are distributed or used in interstate commerce;

(b) If so, whether they are required by compelling local conditions; and

(c) Unduly burden interstate commerce.

**C. Public Participation**

Interested persons are invited to submit written data, views and arguments with respect to the issues described above. These comments must be postmarked on or before July 21, 2000 and submitted to the Regional Administrator, U.S. Department of Labor-OSHA, 1111 Third Avenue, Suite 715, Seattle, WA 98101–3212. Written submissions must clearly identify the issues which are addressed and the position taken with respect to each issue. The Occupational Safety and Health Administration will consider all relevant comments, arguments and requests submitted concerning this standard and will publish notice of the decision approving or disapproving the standard.

**D. Location of Supplement for Inspection and Copying**

A copy of Washington's standard and amendments applicable to Safeguarding Power Transmission Parts, along with approved State provisions for adoption of standards, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor-OSHA, 1111 Third Avenue, Suite 715, Seattle, Washington 98101–3212; State of Washington Department of Labor and Industries, Division of Industrial Safety and Health, 7273 Linderson Way, S.W., Tumwater, Washington 98501; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue, NW, Washington, DC 20210. For electronic copies of this **Federal Register** notice, contact OSHA's Web Page at *http://www.osha.gov*.

**Authority:** Sec. 18, 84 STAT 6108 [29 U.S.C. 667].

Signed at Seattle, Washington, this 9th day of June, 2000.

**Richard S. Terrill,**

*Regional Administrator.*

[FR Doc. 00–15640 Filed 6–20–00; 8:45 am]

**BILLING CODE 4510–26–P**

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

**SUMMARY:** The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 50, ''Domestic Licensing of Production and Utilization Facilities''.

2. Current OMB approval number: 3150–0011.

3. How often the collection is required: As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

4. Who is required or asked to report: Licensees and applicants for nuclear power plants and non-power reactors (research and test facilities).

5. The number of annual respondents: 175.

6. The number of hours needed annually to complete the requirement or request: 4.7M.

7. Abstract: 10 CFR part 50 of the NRC's regulations ''Domestic Licensing of Production and Utilization Facilities,'' specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

Submit, by August 21, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by

Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 13th day of June, 2000.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–15637 Filed 6–20–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Dockets No. 50–295; 50–304, Licenses No. DPR–39; DPR–48, EA 98–518]**

### In the Matter of Commonwealth Edison Company, Zion Nuclear Station, Units 1 and 2; Order Imposing Civil Monetary Penalty

**I**

The Commonwealth Edison Company (Licensee) is the holder of Operating Licenses No. DPR–39 and No. DPR–48, issued by the Nuclear Regulatory Commission (NRC or Commission) on October 19, 1973, and November 14, 1973, respectively. The licenses authorized the Licensee to operate the Zion Nuclear Station, Zion, Illinois, in accordance with the conditions specified therein. On February 13, 1998, the Licensee ceased nuclear operations at the Zion Nuclear Station.

**II**

The NRC Office of Investigations (OI) conducted an investigation of the Licensee's activities at the Zion Station from March 10 to October 15, 1998. The results of this investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated November 3, 1999. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated February 3, 2000. In its response, the Licensee denied the violation and protested the civil penalty.

**III**

After considering the Licensee's response and the statements of fact, explanation, and argument for withdrawing the proposed civil penalty contained therein, the NRC staff has determined that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

**IV**

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $110,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

**V**

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a ''Request for an Enforcement Hearing'' and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at the hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of that violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated this 12th day of June 2000.

**Frank J. Miraglia, Jr.,**

*Deputy Executive Director for Reactor Programs.*

[FR Doc. 00–15636 Filed 6–20–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**DATES:** Weeks of June 19, 26, July 3, 10, 17, and 24, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed.

**MATTERS TO BE CONSIDERED:**

*Week of June 19*

Monday, June 19, 2000

12:30 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 4 and 9b)

Tuesday, June 20, 2000

9:25 a.m. Affirmation Session (Public Meeting)

a: CAROLINA POWER & LIGHT COMPANY (Shearon Harris Nuclear Power Plant), Docket No. 50–400–LA, LBP–00–12 (Memorandum and Order Ruling on Designation of Issues for an Evidentiary Hearing) (May 5, 2000)

9:30 a.m. Briefing on Final Rule—Part 70–Regulating Fuel Cycle Facilities (Public Meeting) (Contact: Theodore Sherr, 301–415–7218)

1:30 p.m. Briefing on Risk-Informed Part 50, Option 3 (Public Meeting) (Contact: Mary Drouin, 301–415–6675)

Wednesday, June 21, 2000

10:30 a.m. All Employees Meeting (Public Meeting) (''The Green'' Plaza Area)

1:30 p.m. All Employees Meeting (Public Meeting) (''The Green'' Plaza Area)

*Week of June 26—Tentative*

There are no meetings scheduled for the Week of June 26.

*Week of July 3—Tentative*

There are no meetings scheduled for the Week of July 3.

*Week of July 10—Tentative*

Monday, July 10

1:30 p.m. Briefing on Proposed Export of High Enriched Uranium

to Canada (Public Meeting)
Tuesday, July 11
9:25 a.m. Affirmation Session (Public Meeting) (If necessary)

*Week of July 17—Tentative*

There are no meetings scheduled for the Week of July 17.

*Week of July 24—Tentative*

Tuesday, July 25
1:25 p.m. Affirmation Session (Public Meeting) (If necessary)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 5–0 on May 30, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Discussion of Intragovernmental Issues'' (Closed-Ex. 9b) be held on May 30, and on less than one week's notice to the public.

By a vote of 5–0 on June 13, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that ''Affirmation of a: NIAGARA MOHAWK POWER CORPORATION (NINE MILE POINT, UNITS 1 & 2); DOCKET NOS. 50–220 & 50–410; and, b: GRAYSTAR, INC. REQUEST FOR HEARING ON LICENSE DENIAL'' (PUBLIC MEETING) be held on June 13, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: June 16, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–15775 Filed 6–19–00; 11:19 am]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### State of Oklahoma: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Oklahoma

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of a proposed Agreement with the State of Oklahoma.

**SUMMARY:** This notice is announcing that the Nuclear Regulatory Commission (NRC) has received a request from Governor Frank Keating of Oklahoma that the NRC consider entering into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act). Section 274 of the Act contains provisions for the Commission to enter into agreements with the Governor of any State providing for the discontinuance of the regulatory authority of the Commission. Under the proposed Agreement, submitted December 28, 1999, the Commission would discontinue and Oklahoma would take over portions of the Commission's regulatory authority over radioactive material covered under the Act within the State of Oklahoma. In accordance with 10 CFR 150.10, persons, who possess or use certain radioactive materials in Oklahoma, would be released (exempted) from portions of the Commission's regulatory authority under the proposed Agreement. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150. NRC is publishing the proposed Agreement for public comment, as required by the Act. NRC is also publishing the summary of an assessment conducted by the NRC staff of the proposed Oklahoma byproduct material regulatory program. Comments are invited on (a) the proposed Agreement, especially its effect on public health and safety, and (b) the NRC staff assessment.

**DATES:** The comment period expires July 7, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

**ADDRESSES:** Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Oklahoma including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Larkins, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2309 or e-mail *pml@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 31 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 220 NRC licenses will transfer to Oklahoma. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274. Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

### I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials. In a letter dated December 28, 1999, Governor Keating certified that the State of Oklahoma has a program for the control of radiation hazards that is adequate to protect public health and safety within Oklahoma for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is included as Appendix A to this notice.

The radioactive material and activities (which together are usually referred to

[1] The radioactive materials, sometimes referred to as agreement materials, are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11a. of the Act, restricted to quantities not sufficient to form a critical mass.

as the ''categories of material'') which the State of Oklahoma requests authority over are: (1) The possession and use of byproduct materials as defined in Section 11e.(1) of the Act; (2) the possession and use of special nuclear material in quantities not sufficient to form a critical mass; (3) the regulation of the land disposal of byproduct source or special nuclear material received from other persons; and (4) source material used to take advantage of its density and high mass properties where the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Oklahoma and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement;
—Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Oklahoma.

(c) Oklahoma currently regulates the users of naturally-occurring and accelerator-produced radioactive materials (NARM). The regulatory program is authorized by law in the Oklahoma Environmental Quality Act at Okla. Stat. tit. 27A § 1–3–101(B)(11) and the Oklahoma Radiation Management Act at 27A § 2–9–103(A). Section 2–9–103(C) of the Act provides the authority for the Governor to enter into an Agreement with the Commission.

Oklahoma law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. Oklahoma law provides that any person who possesses an existing NRC license shall be deemed to possess a like license issued under the Oklahoma Radiation Management Act. After the effective date of the Agreement, licenses issued by NRC would continue in effect until the license expiration specified in the existing NRC license. DEQ will notify affected licensees of the transfer of regulatory authority within fifteen (15) days after the effective date of the signed agreement.

(d) The NRC staff assessment finds that the Oklahoma program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

## II. Summary of the NRC Staff Assessment of the Oklahoma Program for the Control of Agreement Materials

NRC staff has examined the Oklahoma request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement'' (referred to herein as the ''NRC criteria'') (46 FR 7540; January 23, 1981, as amended).

(a) Organization and Personnel. The agreement byproduct material program will be located within the existing Radiation Management Section (RAM) of the Waste Management Division, an organizational unit of the Oklahoma Department of Environmental Quality (DEQ). The RAM Section currently has responsibility for directing and managing a formal registration program begun in 1993, that includes inspections and fees for radioactive material that occur naturally or are produced by particle accelerators, and industrial x-ray machines. The DEQ also has responsibility for regulation of machine produced radiation, and non-ionizing radiation. The regulatory authority over the use of sources of radiation by diagnostic medical x-ray remains with the Oklahoma Department of Health. Based on discussions with the RAM program manager, the DEQ plans to implement a licensing program for radioactive materials that occur naturally in the future after the State assumes regulatory authority under the Agreement. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the DEQ staff members are specified in the Oklahoma State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. Each current staff member has at least a bachelors' degree or equivalents in physical/life sciences or engineering, with one exception. One staff member trainee has a degree in Education. Several staff members hold advanced degrees. Most staff members were hired from other environmental programs in the DEQ with considerable experience in a variety of environmental program areas. The program staff has considerable experience in related regulatory program implementation including air pollution, hazardous waste, solid waste, sewage treatment, and water use issues. The program manager and two senior technical staff have 10 years of regulatory experience with DEQ and 6, 6, and 3 years respectively in the RAM program as well as several years of prior experience working with radioactive material, radiation protection, or hazardous waste.

A third senior staff member has three years of industry experience and three years with the DEQ RAM program. One junior staff member has three years experience as a laboratory technician using radionuclides for labeling and two years with the DEQ RAM program. Three other staff members, currently in training, have between 3 and 9 years experience, primarily in the environmental regulatory area. One has completed one year related experience with DEQ RAM, one has 3.5 years of related nuclear power plant experience as a health physicist decontamination technician, and one has six years related experience as a well logging engineer.

Based on information provided in the staffing analysis, the manager, three senior technical staff, and one junior staff member will conduct the licensing and inspection activities. These staff members have attended nearly all of the available relevant NRC training courses, including the 5-week Applied Health Physics course, inspection and licensing courses, and the majority of use-specific courses. In addition, staff members have accompanied NRC inspectors and worked with NRC licensing staff to obtain additional on-the-job experience.

The DEQ has adopted a written program for the training and qualification of staff members, which covers both new staff members and the continuing qualification of existing staff. NRC staff notes that the Oklahoma agreement materials program will be evaluated under the Commission's Integrated Materials Performance Evaluation Program (IMPEP). One IMPEP criterion addresses staff training and qualifications, and includes a specific criterion which addresses

training and qualification plans. NRC staff reviewed the plan, and concludes that it satisfies the IMPEP criterion element.

The DEQ provided copies of memoranda authorizing full qualification to three senior staff, and limited interim qualification to one junior staff member, in accordance with Oklahoma's Formal Qualification Plan. All four staff are designated to provide technical support to the program at the time the Agreement is signed.

Based upon review of the information provided in the staffing analysis, NRC staff concludes that overall the program has an adequate number of technically qualified staff members and that the technical staff identified by the State to participate in the Agreement materials program are fully trained, and qualified in accordance with the DEQ plans, have sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of agreement materials to satisfy the criterion.

(b) Legislation and Regulations. The Oklahoma DEQ is designated by law in the Oklahoma Radiation Management Act at Okla. Stat. Tit. 27A § 2–9–103 as the radiation control agency. The law provides the DEQ the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Environmental Quality Board is authorized to promulgate regulations.

The law requires the Environmental Quality Board to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The DEQ has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations. The adoption by reference is contained in Title 252 Chapter 410 of the Oklahoma Administrative Code (OAC). Oklahoma rule 252:410–10–2 specifies that references to the NRC will be construed as references to the Director of the DEQ.

The NRC staff review verified that the Oklahoma rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

(c) Storage and Disposal. Oklahoma has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) Transportation of Radioactive Material. Oklahoma has adopted the NRC regulations in 10 CFR part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Oklahoma will not attempt to enforce portions of the regulation related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Record keeping and Incident Reporting. Oklahoma has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. Oklahoma has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Oklahoma has also developed a licensing procedure manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The Oklahoma radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for conducting inspections, reporting inspection findings, and reporting inspection results to the licensees from similar NRC documents. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The Oklahoma DEQ is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Oklahoma law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. Oklahoma law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Oklahoma under the Oklahoma Radiation Management Act. Such license will expire on the date of expiration specified in the existing NRC license. Oklahoma will retain the NRC license numbers of existing licenses until they expire under DEQ jurisdiction. As of the effective date of the Agreement, any pending or new license applications and renewals will be transferred to DEQ. DEQ will notify affected licensees of the transfer of regulatory authority within fifteen (15) days after the effective date of the signed agreement.

Oklahoma's Administrative Procedures Act also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and the U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Oklahoma to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Oklahoma's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Oklahoma to use their best efforts to accord such reciprocity.

**III. Staff Conclusion**

Subsection 274d of the Act provides that the Commission will enter into an Agreement under Subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of

Oklahoma meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

**IV. 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 of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 1st day of June, 2000.

For the Nuclear Regulatory Commission.

**Paul H. Lohaus,**

*Director, Office of State and Tribal Programs.*

**An Agreement Between the United States Nuclear Regulatory Commission and the State of Oklahoma for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended**

*Whereas,* The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and, *Whereas,* The Governor of the State of Oklahoma is authorized under Section 2–9–103(c) of the Radiation Management Act (27A O.S. Supp. 1998 § 2–9–101 *et seq.*) to enter into this Agreement with the Commission; and,

*Whereas,* The Governor of the State of Oklahoma certified on December 28, 1999 that the State of Oklahoma (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety with respect to materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

*Whereas,* The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

*Whereas,* The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

*Whereas,* The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

*Whereas,* This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

*Now therefore,* It is hereby agreed between the Commission and the Governor of the State of Oklahoma, acting in behalf of the State, as follows:

*Article I*

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct material as defined in Section 11e.(1) of the Act;

B. Source material used to take advantage of the density and high-mass property for the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

C. Special nuclear materials in quantities not sufficient to form a critical mass;

D. The regulation of the land disposal of byproduct source or special nuclear waste material received from other persons.

*Article II*

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste material as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. Byproduct material as defined in Section 11e.(2) of the Act;

G. Source material except for source material used to take advantage of the density and high-mass property for the use of the specifically licensed source material is subordinate to the primary specifically licensed use of either 11e.(1) byproduct material or special nuclear material;

*Article III*

With the exception of those activities identified in Article II, paragraph A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, paragraphs E through G, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

*Article IV*

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

*Article V*

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and

security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

*Article VI*

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of byproduct material covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

*Article VII*

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

*Article VIII*

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j(2) of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

*Article IX*

This Agreement shall become effective on [TBA], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Dated at Rockville, Maryland, this _____th day of _____, 2000.

For the United States Nuclear Regulatory Commission.

_____ Chairman

Dated at Oklahoma City, Oklahoma this _____th day of _____, 2000.

For the State of Oklahoma

_____ Governor

[FR Doc. 00–15635 Filed 6–20–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### 2000 List of Designated Federal Entities and Federal Entities

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice.

**SUMMARY:** This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

**FOR FURTHER INFORMATION CONTACT:** Karen Shaffer or Tawana Webb at 202–395–6911, Office of Federal Financial Management, Office of Management and Budget.

**SUPPLEMENTARY INFORMATION:** This notice provides a copy of the 2000 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act. This list is also posted on the Inspector General Community's website, IGNET, at http://www.ignet.gov.

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The Designated Federal Entities are listed in the IG Act, except that those agencies which have ceased to exist have been deleted from the list.

Federal Entities are required to report annually to each House of the Congress and OMB on audit and investigative activities in their organizations. Federal Entities are defined as ''any Government corporation (within the meaning of section 103 (1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103 (2) of such title), or any other entity in the Executive Branch of government, or any independent regulatory agency'' other than the Executive Office of the President and agencies with statutory Inspectors General. There are 2 deletions and no additions in the 2000 list of Designated Federal Entities and Federal Entities from the 1999 list published in the August 19, 1999, **Federal Register**. The Denali Commission was transferred to the Designated Federal Entities list.

The 2000 List of Designated Federal Entities and Federal Entities was prepared in consultation with the U.S. General Accounting Office.

**Joshua Gotbaum,**

*Executive Associate Director and Controller, Office of Federal Financial Management.*

Herein follows the text of the 2000 List of Designated Federal Entities and Federal Entities:

### 2000 List of Designated Federal Entities and Federal Entities

The Inspector General Act of 1978, as subsequently amended, requires OMB to publish a list of ''Designated Federal Entities'' and ''Federal Entities'' and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

### Designated Federal Entities and Entity Heads

1. Amtrak—President
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Denali Commission—Chairperson
8. Equal Employment Opportunity Commission—Chairperson
9. Farm Credit Administration—Chairperson
10. Federal Communications Commission—Chairperson
11. Federal Election Commission—Chairperson

12. Federal Housing Finance Board—Chairperson
13. Federal Labor Relations Authority—Chairperson
14. Federal Maritime Commission—Chairperson
15. Federal Trade Commission—Chairperson
16. Legal Services Corporation—Board of Directors
17. National Archives and Records Administration—Archivist of the United States
18. National Credit Union Administration—Chairperson
19. National Endowment for the Arts—Chairperson
20. National Endowment for the Humanities—Chairperson
21. National Labor Relations Board—Chairperson
22. National Science Foundation—National Science Board
23. Peace Corps—Director
24. Pension Benefit Guaranty Corporation—Chairperson
25. Securities and Exchange Commission—Chairperson
26. Smithsonian Institution—Secretary
27. Tennessee Valley Authority—Board of Directors
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Governors of the Postal Service

**Federal Entities and Entity Heads**

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
13. Court of Appeals for Veterans Claims—Chief Judge
14. Defense Nuclear Facilities Safety Board—Chairperson
15. Export-Import Bank—President and Chairperson
16. Farm Credit System Financial Assistance Corporation—Chairperson
17. Farm Credit System Insurance Corporation—Chairperson
18. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
19. Federal Mediation and Conciliation Service—Director
20. Federal Mine Safety and Health Review Commission—Chairperson
21. Federal Retirement Thrift Investment Board—Executive Director
22. Harry S. Truman Scholarship Foundation—Chairperson
23. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
24. Institute of Museum and Library Services—Director
25. Inter-American Foundation—Chairperson
26. James Madison Memorial Fellowship Foundation—Chairperson
27. Japan-U.S. Friendship Commission—Chairperson
28. Marine Mammal Commission—Chairperson
29. Merit Systems Protection Board—Chairperson
30. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
31. National Capital Planning Commission—Chairperson
32. National Commission on Libraries and Information Science—Chairperson
33. National Council on Disability—Chairperson
34. National Education Goals Panel—Chairperson
35. National Mediation Board—Chairperson
36. National Transportation Safety Board—Chairperson
37. Neighborhood Reinvestment Corporation—Chairperson
38. Nuclear Waste Technical Review Board—Chairperson
39. Occupational Safety and Health Review Commission—Chairperson
40. Office of Government Ethics—Director
41. Office of Navajo and Hopi Indian Relocation—Chairperson
42. Office of Special Counsel—Special Counsel
43. Offices of Independent Counsel—Independent Counsels
44. Overseas Private Investment Corporation—Board of Directors
45. Postal Rate Commission—Chairperson
46. Presidio Trust—Chairperson
47. Selective Service System—Director
48. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
49. Smithsonian Institution/National Gallery of Art—President
50. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Director
51. State Justice Institute—Director
52. Trade and Development Agency—Director
53. U.S. Holocaust Memorial Council—Chairperson
54. U.S. Institute of Peace—Chairperson

[FR Doc. 00–15685 Filed 6–20–00; 8:45 am]

BILLING CODE 3110–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Comment Request; Review of a Revised Information Collection; Optional Form 306

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** The Optional Form 306 (Declaration for Federal Employment) is used by OPM and other agencies to collect information to determine an individual's acceptability for Federal employment and enrollment status in the Government's Life Insurance program. We plan to add the following questions about Selective Service Registration, which are currently on the Applicant's Statement of Selective Service Registration to the Optional Form 306: ''If you are a male born after December 31, 1959, and are at least 18 years of age, civil service employment law (5 U.S.C. 3328) requires you must register with the Selective Service System, unless you meet certain exemptions. Are you a male born after December 31, 1959? Yes_____ No_____ Have you registered with the Selective Service? Yes_____ No_____. If No, describe your reason(s) in item 16.''

We estimate 474,000 forms will be completed annually. Each form takes approximately 15 minutes to complete. The annual estimated burden is 118,500 hours.

To obtain copies of this proposal please contact Mary Beth Smith-Toomey at (202) 606–8358, or Fax (202) 418–3251, or by e-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before July 21, 2000.

**ADDRESSES:** Send or deliver comments to:

Richard A. Ferris, Associate Director for Investigations, Office of Personnel

Management, 1900 E Street, NW., Room 5416, Washington, DC 20415–4000

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–15643 Filed 6–20–00; 8:45 am]

BILLING CODE 6325–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Rule 13f–1; SEC File No. 270–22; OMB Control No. 3235–0006]**

### Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549–0007.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 13(f) [1] of the Securities Exchange Act of 1934 [2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f–1 [3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts—having in the aggregate a fair market value of at least $100,000,000 of exchange-traded or NASDAQ-quoted equity securities—to file quarterly reports with the Commission on Form 13F.

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(5) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Rule 13f–1(b) under the Exchange act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The Commission staff estimates that 2,108 respondents make approximately 8,949 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 129 respondents file approximately 516 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 208,786.4 hours (2,108 filers × 98.8 hours) + (129 filers × 4 hours)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. 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 are invited on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0004.

[1] 15 U.S.C. 78m(f)

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

Dated: June 14, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15620 Filed 6–20–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27187]**

### Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

June 14, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 5, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 5, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Entergy Corporation et al. (70–9667)**

Entergy Corporation (''Entergy''), a registered holding company, located at 639 Loyola Avenue, New Orleans, Louisiana 70113, and four of its wholly owned public utility subsidiaries (''Entergy Operating Companies''), Entergy Arkansas, Inc., located at 425 West Capitol Avenue, 40th Floor, Little Rock Arkansas 72201, Entergy Gulf States, Inc., located at 350 Pine Street, Beaumont, Texas 77701, Entergy Louisiana, Inc., located at 639 Loyola Avenue, New Orleans, Louisiana 70113, and Entergy Mississippi, Inc., located at 308 East Pearl Street, Jackson,

Mississippi 39201, have filed a declaration under section 12(d) of the Act and rules 44(b) and 54 under the Act.

Entergy and the Entergy Operating Companies request authorization through December 31, 2004, to transfer, without further Commission approval, up to $40,000,000 per year of utility assets in the aggregate, or no more than $12,000,000 per individual Entergy Operating Company per year. The assets that Entergy and the Entergy Operating Companies wish to transfer include substations and transmission and distribution lines or other utility assets presently dedicated to serving customers. The application states that the consideration for any transfers will be no less than the net book value of the assets being sold. In the case of a lease of utility assets, the lease payments will be valued using a discount factor equal to the selling company's allowed rate of return at the time of entering into the lease and counted against the exemption amount in the initial year of the lease.

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15621 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42925; File No. SR–Amex–00–11]**

## Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the American Stock Exchange LLC Relating to Floor Official Rulings

June 13, 2000.

### I. Introduction

On February 22, 2000, the American Stock Exchange LLC (''Amex'' 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'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require a written record of all floor official rulings. The proposed rule change was published in the **Federal Register** on April 25, 2000.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

### II. Description of the Proposed Rule Change

The Amex proposes to revise its Rule 22 to require a written record of all floor official rulings, including rulings involving complaints of harassment, intimidation or other activities in violation of Exchange rules by either specialists or traders. Currently, floor officials are not required to make a written record of their rulings unless specifically requested by a member to do so.

The Exchange proposes to develop a form to be used by floor officials on which they will be able to record their rulings. Floor officials will be required to prepare the completed rulings form as soon as practicable after the decision is made and to submit their rulings on the Exchange form at the end of each trading day. Floor officials who fail to complete the written rulings form may be removed from their position or may become ineligible for reappointment.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[5] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Further, the Commission finds that the proposal is consistent with the requirements of section 6(b)(7) of the Act[6] because it provides a fair procedure for disciplining members of the Exchange.

The Amex has proposed to modify its procedures for rulings made by floor officials. Rather than relying solely on verbal rulings made on the floor, Amex proposes to require floor officials to reduce their rulings to writing and to require floor officials to submit such written rulings to the Exchange. The Commission believes that requiring written rulings will assist in fostering a fair disciplinary procedure on the floor of the Exchange. A written ruling provides an official record of member conduct and the events that led to the floor official's decision. Members will be able to review the rulings and therefore, should be better able to conform their conduct to the requirements of the Exchange's rules. Further, members will have the floor official's written findings regarding the member's conduct and the basis upon which the floor official relied to make his or her decision. Members will continue to be able to appeal floor official decisions as is currently provided in Amex Rule 22. The Commission believes that a written record of the decision will enhance the fairness and efficiency of the appeals process.

Further, the Exchange will have a written record of the alleged conduct, upon which it may base investigations or other inquiries. The proposal requires floor officials to make their written rulings as soon as practicable after the decision is made. This should lead to a more complete and full description of the conduct and the floor official's basis for his or her ruling because floor officials should complete their written rulings while the details are fresh in their memories. A written record should provide the Exchange with an enhanced mechanism by which to prevent violations of its rules as well as the violations of the Act. The Exchange will review all floor official rulings and determine if further investigation or inquiry is warranted. This should enable the Exchange to enforce its rules in a more fair and efficient manner, and provide the Exchange with a means to prevent fraudulent and manipulative acts on its floor.

Finally, the proposal provides that if a floor official fails to submit his or her written findings to the Exchange at the end of each trading day, the floor official may be subject to removal or become ineligible for reappointment as a floor official. The Commission believes that this provision is appropriate because it seeks to enforce floor official compliance with the proposed rule change.

### IV. Conclusion

*It is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act.[7] that the proposed rule change (SR–Amex–00–11) is approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42697 (April 18, 2000), 65 FR 24234.

[4] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15613 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42931; File No. SR–AMEX–99–45]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Increase the Maximum Order Size Eligible for Automatic Execution

June 13, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 25, 1999, the American Stock Exchange LLC (''Amex'' 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 Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to increase to seventy-five, the maximum permissible number of equity and index option contracts in an order executable through the AUTO–EX system. The text of the proposed rule change is available at the Office of the Secretary, Amex 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 Amex 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 Amex 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

In 1985, the Exchange implemented the AUTO–EX system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File (''AOF''). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to AUTO–EX, was recently increased to allow for the entry of orders up to 250 option contracts.[3] Generally, however, AUTO–EX is only permitted to execute equity option orders and index option orders of up to fifty contracts.[4] Thus, market and marketable limit orders of more than fifty contracts are generally routed by AOF to the specialist's book.

The Exchange now proposes to increase to seventy-five, the maximum permissible number of equity and index option contracts in an order that can be executed through the AUTO–EX system.[5] It is proposed that this increase in permissible order size be implemented on a case-be-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

The Exchange represents that AUTO–EX has been extremely successful in enhancing execution and operational efficiencies during emergency situations and during other, non-emergency situations for certain option classes. The Exchange believes that automatic executions of orders for up to seventy-five contracts will allow for the quick, efficient execution of public customer orders.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[6] of the Act in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved

### IV. Solicitations of Comments

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition, the Commission seeks comment concerning whether the proposed rule change fosters quote competition among options market professionals and enhances investors' interests in obtaining the best available price.

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

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42128 (November 10, 1999), 64 FR 63836 (November 22, 1999).

[4] *See* Securities Exchange Act Release No. 42094 (November 3, 1999), 64 FR 61675 (November 12, 1999). While the maximum permissible number of contracts in an option order executable through AUTO–EX is generally fifty contracts, there are three exceptions: the Institutional, Japan and S&P MidCap 400 Indexes allow ninety-nine contract orders.

[5] Order size maximum levels for Institutional, Japan, and S&P MidCap 400 Indexes (*Id.*) would remain at ninety-nine contracts under this proposal.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–99–45 and should be submitted by July 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Jonathan G. Katz,**

*Deputy Secretary.*

[FR Doc. 00–15617 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42928; File No. SR–Amex–99–30]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendments Nos. 1 and 2 Thereto Amending Exchange Rule 18; Withdrawal From Listing

June 13, 2000.

### I. Introduction

On August 13, 1999, the American Stock Exchange LLC (''Amex'' 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''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Exchange Rule 18. On September 28, 1999, the Amex submitted Amendment No. 1 to the proposed rule change.[3] On February 3, 2000, the Amex submitted Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendments Nos. 1 and 2, was published for comment in the **Federal Register** on February 23, 2000.[5] The Commission did not receive any comment letters with respect to the proposal. This order approves the Exchange's proposal, as amended.

### II. Description of the Proposal

Amex Rule 18 currently requires an issuer, prior to withdrawing a security from listing on the Exchange, to file with the Exchange a certified copy of a resolution adopted by the board of directors authorizing withdrawal from listing and registration and explaining the reasons for such withdrawal. The Amex rule also provides that the Exchange may require the issuer to send to all registered holders of such security a statement of the reasons for such application, together with facts in support thereof within at least fifteen days prior to the filing of a delisting application with the Commission.[6] These Exchange Rule 18 requirements must be met before an application for delisting can be filed with the Commission.

According to the Amex, Exchange Rule 18 has not been applied in many years with respect to issuers seeking to voluntarily withdraw their securities from the listing on the Exchange. The Exchange believes Amex Rule 18 represents a needless restriction imposing burdensome delays on an issuer's decision to delist. The Amex stated that the proposed amendment to Exchange Rule 18 will implement its decision to eliminate obstacles and delays for issuers seeking to voluntarily withdraw their common stock from listing on the Exchange. Under the proposed amendments to Amex Rule 18, an issuer will be able to voluntarily withdraw a security from listing on the Exchange upon written notice to the Exchange, provided the issuer complies with all applicable state laws in effect in the state in which it is incorporated.[7]

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act[8] and the rules and regulations thereunder applicable to a national securities exchange.[9] In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act[10] and which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

Over the last several years, Commission staff has express concerns regarding the potentially anti-competitive effects of certain rules adopted by self-regulatory organizations (''SROs''), such as Amex Rule 18.[11] The Commission encouraged the Amex to revise the standards a company must comply with prior to voluntarily delisting its securities from the Amex.[12] The Commission believes that the exchanges should provide a listed company with a reasonable opportunity to move to another market if it so desires, thereby increasing competition among the markets. For example, on July 21, 1999, the Commission approved a proposed rule change to revise New York Stock Exchange's (''NYSE'') Rule 500 to simplify the procedures a NYSE-listed company must follow to voluntarily delist its securities from the NYSE.[13] The Commission believes that the proposed amendments to Amex Rule 18 should similarly eliminate obstacles and delays for issuers seeking to delist their securities voluntarily from the Amex.

Furthermore, the voluntary delisting procedures proposed by the Amex in the amended proposal represent a significant and positive change over the current delisting process and requirements in the Amex's rules. Specifically, the Commission believes that the proposed requirement that a listed company simply submit written

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael Walinskas, Deputy Associate Director, Division of Market Regulation (''Division''), Commission, from Michael J. Ryan, Chief of Staff, Amex, dated September 24, 1999 (''Amendment No. 1''). In Amendment No. 1, Amex proposes to amend Exchange Rule 18 instead of rescinding the rule in its entirety, as proposed in its initial filing, to provide that an issuer may voluntarily withdraw a security from listing on the Exchange upon written notice to the Exchange.

[4] *See* Letter to Marla Chidsey, Attorney, Division, Commission, from Ivonne Lugo, Associate General Counsel, Amex, dated February 2, 2000 (''Amendment No. 2''). In Amendment No. 2, Amex proposes to require the issuer to comply with all applicable state laws in effect in the state in which it is incorporated prior to filing to delist from the Amex. Amendment No. 2 also proposes to make conforming amendments to the *Amex Company Guide* Sections 1010 and 1011.

[5] Securities Exchange Act Release No. 42427 (February 15, 2000), 65 FR 9024.

[6] *See* 15 U.S.C. 781(d) and 17 CFR 240.12d2–2 describing how an issuer may delist from a national securities exchange.

[7] The rule further states that the requirement of written notice that must be met before an application for delisting can be filed with the Commission.

[8] 15 U.S.C. 78f.

[9] 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).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* Market 2000 Report: An Examination of Current Equity Market Developments, Division, Commission, January, 1994, at 30.

[12] *Id.* at 31.

[13] Securities Exchange Act Release No. 41634, 64 FR 40633 (July 27, 1999).

notice to the Amex that it wants to delist provided that it has followed all applicable state laws in effect in the state in which it is incorporated should ensure compliance with investor protections codified in relevant state statutes while still significantly streamlining the delisting process on the Amex.[14] As a result, because the proposed amendments to Amex Rule 18 ease the existing restrictions on Amex-listed companies that wish to voluntarily delist their securities from the Exchange while continuing to ensure compliance with applicable state laws, the Commission believes that the Amex's proposed revisions to Amex Rule 18, as amended, are consistent with the requirements of Section 6(b)(5) of the Act [15] that requires the rules of the Exchange to further the protection of investors and public interest.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–Amex–99–30), including amendments Nos. 1 and 2, is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15619 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42943; File No. SR–CBOE–00–20]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated, Amending Its Rules to Mandate Decimal Pricing Testing

June 14, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 24, 2000, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The CBOE has designated this proposal as one concerned solely with the administration of the CBOE under Section 19(b)(3)(A)(iii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposed to amend its rules to mandate that member firms test computer systems in order to ensure preparedness for the industry's conversion to decimal pricing.

The text of the proposed rule change is available upon request from the CBOE or the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filling with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding 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

As the securities industry prepares for the conversion to decimal pricing, it will be necessary for various constituents of the securities industry to test their computer systems in order to avoid widespread problems. The CBOE, in cooperation with the Commission and other self-regulatory organizations, has been working toward a successful transition to decimal pricing. The purpose of the proposed rule change is to require CBOE member firms to participate in tests of computer systems designed to prepare for the industry's conversion to decimal pricing.

The proposed rule change would create new CBOE Rule 15.12 to require CBOE members to participate in the testing of computer systems in a manner and frequency to be prescribed by the Exchange. It is the CBOE's understanding that other self-regulatory organizations, including the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., and the American Stock Exchange LLC, are also proposing rule changes to require testing by their members in connection with the industry's conversion to decimal pricing.

The Securities Industry Association has undertaken to coordinate industry-wide computer testing to ensure that the securities industry is adequately prepared to convert to decimal pricing. Industry constituents to participate in the testing will include, among others, national securities exchanges, registered clearing corporations, data processors, and broker-dealers. Several industry-wide tests have been planned, the first of which took place in April 2000.

The CBOE will employ its new Rule 15.12 to require that its members participate in these tests. CBOE Rule 15.12 further provides that any firm having an electronic interface with the Exchange would be required to conduct point-to-point testing with the Exchange. Point-to-point testing refers to tests conducted between two entities, in this case a member having an electronic interface and the Exchange.[4]

Under the proposal, the Exchange would require member firms to participate in industry-wide testing to the extent such firms can be accommodated by the testing schedule. The Exchange would exercise its authority under CBOE Rule 15.12 to the extent it deems that the participation of particular members in the testing is important, and to the extent those members would otherwise not voluntarily choose to participate.

The proposed rule change would also allow the CBOE to require members to file reports with the CBOE concerning the required tests in the manner and frequency determined by the Exchange. A member subject to CBOE Rule 15.12 who failed to participate in the manadatory tests or who failed to file any required reports, would be subject to disciplinary action pursuant to Chapter XVII of the Exchange's rules.

The Exchange believes that it currently has the authority, without the

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[14] As discussed above, the revision of Amex Rule 18 eliminates requirements for Amex issuers that were imposed by Amex Rule 18. Issuers wanting to voluntarily delist would still be required to comply with Section 12 of the Act, which provides notice and an opportunity for public comment. *See supra* note 6.

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] A member that has its electronic interface with the Exchange through a service provider may be exempted from this requirement if such service provider conducts successful tests with the Exchange on behalf of the firms its services, if the member conducts successful point-to-point testing with the service provider by a time to be designated by the Exchange, and if the Exchange agrees that no further testing is necessary.

approval of CBOE Rule 15.12, to require testing and reporting with respect to the implementation of decimal pricing under the broad authority granted it to enforce the provisions of the Act and to ensure the safety of its marketplace. More specifically, CBOE Rule 4.2 prohibits members from engaging in conduct that violates the Act or rules and regulations thereunder; CBOE Rule 4.3 provides the Exchange authority to approve the maintenance of any wire connections between its members and other members or non-members; and CBOE Rule 4.10 gives the President or the Chairman of the Exchange the right to impose such conditions and restrictions on a member as either may consider reasonably necessary for the protection of the Exchange and the customers of such member. Notwithstanding this existing authority, however, the Exchange believes that its membership would be better served by having its specific intentions with respect to mandatory decimal pricing testing defined in a stand-alone rule.

The proposed CBOE Rule 15.12 would expire automatically upon the completion of decimal pricing implementation.

2. Statutory Basis

The CBOE believes proposed CBOE Rule 15.12, whose purpose is to ensure the participation of Exchange members in important testing prior to the securities industry's conversion to decimal pricing, is consistent with Section 6(b) of the Act [5] in general and further the objectives of Section 6(b)(5) [6] in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

*C. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*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 to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change is concerned solely with the administration of the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [7] and subparagraph (f)((3) of Rule 19b–4 thereunder.[8] 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 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–20 and should be submittted by July 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15614 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(3).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42930; File No. SR–CBO–99–51]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Increase the Maximum Order Size Eligible for Automatic Execution

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 1, 1999, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The CBOE proposes to amend its rules governing the operation of its Retail Automatic Execution System (''RAES'') to increase the maximum size of orders eligible for execution on RAES, and make conforming changes to CBOE's firm quote rule and Interpretation .03 thereunder. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The principal purpose of the proposed rule change is to increase from fifty contracts to seventy-five contracts

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the maximum size of orders for equity options and certain classes of index options that are eligible to be executed through RAES.[3] Additionally, the proposed rule change makes certain complementary changes to the Exchange's firm quote rule and Interpretation .03 thereunder.

Currently, the maximum size of RAES-eligible orders is fifty contracts for all classes of options traded on CBOE for which a greater maximum is not expressly provided in the rules.[4] Options subject to the fifty contract maximum include all classes of equity options, all classes of sector index options and all other classes of index options except options on the S&P 500 Index, options on the Nasdaq 100 Index, options on the Dow Jones Industrial Average (''DJIA''), options on the High Yield Select Ten, and interest rate options.[5] Increasing the RAES eligibility maximum to seventy-five contracts for these classes of options will not automatically permit orders up to this size to be entered into RAES. Instead, the actual maximum RAES eligibility size is established by the appropriate Floor Procedure Committee (''FPC'') of the Exchange, which may maintain the maximum for particular classes at levels below the seventy-five contract maximum that would be allowable under the proposed rule change.

The CBOE represents that increasing automatic execution levels will provide the benefits of automatic execution to a larger number of customer orders. The CBOE also represents that RAES affords prompt and efficient executions at the CBOE displayed price or, in most cases, at the National Best Bid or Offer (''NBBO'') if the NBBO is better than the CBOE's displayed bid or offer.

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of RAES orders even as the maximum order size is increased. The Exchange's firm quote rule, Rule 8.51, ensures that non-broker dealer customer orders will be executed at the CBOE's displayed quote or better even if an order is rejected from RAES because a better quote is being disseminated by another market. Rule 8.51(a) states that the firm quote requirement for a particular class of options shall be no less than the RAES contract limit applicable to that class of options. This ensures that orders that are rejected from RAES will still be executed at the CBOE's displayed quote or better.

In this filing, the CBOE proposes to amend Rule 8.51(a) to state that if the RAES contract limit is established at a level of higher than fifty contracts then the firm quote requirement will be for fifty contracts. The Exchange believes that because, for the most part, the RAES contract limit and the firm quote limit are of comparable levels on the CBOE, a firm representing a customer will not be disadvantaged if it determines to seek the quick and relatively assured execution available on RAES: even if the order is kicked out, if will be entitled to the firm quote guarantee in most instances.[6]

In addition, the Commission has approved a rule filing permitting the implementation of Variable RAES.[7] Variable RAES allows market makers to specify the maximum size of orders which they are willing to trade at any one time on RAES, subject to a minimum size that may be established by the appropriate FPC. Variable RAES was proposed to ensure that market makers are willing to continue to participate on RAES even as the maximum contract size is increased. The CBOE represents that the appropriate FPC will likely implement Variable RAES in any options class that has a contract limit of seventy-five contracts to ensure that there is adequate market-maker participation in that class.

There is also a rule that requires DPMs to participate in any automated execution system which may be open in appointed option classes (Rule 8.80(c)(5)) and a rule that states that market makers are expected to participate in and support Exchange-sponsored automated programs, including but not limited to RAES (Interpretation .07 to Rule 8.7). The Exchange is in the process of assigning a large percentage of its option classes that were formerly traded in market-maker crowds to DPMs.[8]

The Exchange also has rules that allow for RAES to be suspended when a fast market has been declared in order to maintain a fair and orderly market.[9] This rule provides the Exchange with the flexibility to intervene if it determines that there is inadequate market maker participation or capital requirements. In addition, CBOE Rule 8.16(b) requires a market maker who has logged onto RAES at any time during an expiration month to log onto RAES in that option class whenever he is present in the trading crowd until the next expiration. CBOE Rule 8.16(c) states that if there is inadequate participation on RAES then Floor Officials of the appropriate Market Performance Committee may require market makers who are members of the trading crowd to log on to RAES absent reasonable justification or excuse for non-participation. Alternatively, the Floor Officials may allow market makers in other classes of options to log on to RAES in such classes.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting DPMs which is currently set forth in Interpretation .02 to Rule 8.80. The Exchange has proposed to increase the DPM capital requirements in a rule filing pending before the Commission.[10] In addition, the clearing firms for market makers and DPMs perform risk management functions to ensure that the market makers have sufficient financial resources to cover their positions.

In addition to increasing the maximum size for RAES-eligible orders in certain classes of options, the Exchange is proposing to change Interpretation .03 to Rule 8.51, the Exchange's firm quote rule. Interpretation .03 states that ''Market-Maker orders and other broker-dealer proprietary order that in each case are for less than the firm quote requirement applicable for that class of options and are represented in the crowd by a Floor Broker or DPM should not be reflected in the displayed market quote.'' With respect to all option classes other than broad-based index option classes, the Exchange is proposing to change this requirement such that the only orders exempted from being reflected in the market quote are market maker orders represented in the crowd by a Floor Broker or DPM for less than ten contracts. This change will ensure that any broker-dealer order represented in the crowd will be presented in CBOE's

[3] RAES is the Exchange's automatic execution system for public customer market or marketable limit orders of less than a certain size.

[4] *See* Securities Exchange Act Release No. 41821 (September 1, 1999), 64 FR 50313 (September 16, 1999).

[5] The RAES eligibility maximum is currently 100 contracts for options on the S&P 500 Index, the Nasdaq 100 Index, the DJIA, the High Yield Select Ten, and interest rate options. *See supra* note 4.

[6] The Commission recently approved a proposal by the Exchange to allow an order entered into RAES to trade directly with an order on the Exchange's customer limit order book in those cases where the prevailing market bid or offer is equal to the best bid or offer on the Exchange's book. *See* Securities Exchange Act Release No. 41995 (October 8, 1999), 64 FR 56547 (October 20, 1999).

[7] *See supra* note 4.

[8] The entire equity options floor has been assigned to DPMs. Telephone conversation between Timothy Thompson, Director—Regulatory Affairs, CBOE, and Gordon Fuller, Special Counsel, Commission, on March 9, 2000.

[9] *See* CBOE Rule 6.6(b)(vi).

[10] *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 2369 (May 3, 1999).

quote and may thus become the basis for a quote at which an order may be executed. The Exchange will conduct further review to determine whether to include broad-based index option classes under the proposed change in the future.

The Exchange believes that the increase should provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the amount of orders subject to manual processing. In support of its proposal to increase the RAES eligibility maximum, CBOE represents that its system capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from the implementation of this proposal.

2. Statutory Basis

The proposed rule change will enhance the ability of the Exchange to provide instantaneous, automatic execution of public customers' orders at the best available prices, which furthers the objectives of Section 6(b)(5) [11] of the Act to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

*B. Self-Regulatory Organizatin's Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approved such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition, the Commission seeks comment concerning whether the proposed rule change fosters quote competition among options market professionals and enhances investors' interests in obtaining the best available price.

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 CBOE. All submission should refer to File No. SR–CBOE–99–51 and should be submitted by July 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15616 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42929; File No. SR–CHX–00–18]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Fees for the E-Session

June 13, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 1, 2000, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') 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 Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its membership dues and fees schedule (the ''Schedule'') to continue, through October 1, 2000, the waiver of all transaction, order processing and floor broker fees for transactions that occur during the CHX's after-hours trading session (''E-Session''). The text of the proposed rule change is available upon request from the Commission or the CHX.

**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 proposed rule change amends the Schedule to eliminate, through October 1, 2000, order processing, transaction and floor broker fees for transactions that occur during the CHX's E-Session.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR–CHX–99–16). The E-Session takes place from 3:30 p.m. to 5:30 p.m. Central

The proposal is designed to allow CHX members to continue to participate in the E-Session without incurring the fees normally associated with their CHX transactions.[5] According to the CHX, the vast majority of the securities that trade during the E-Session are already subject to order processing and transaction fee waivers under the current fee schedule because they are either NASDAQ/NMS issues or issues within the S&P 500. The CHX believes that waiving fees on the few remaining securities and on floor broker transactions in all securities will simplify the Exchange's fee-related communications with its members.

2. Statutory Basis

The CHX believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange 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 solicited or received.

**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)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed ruled 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 Exchange. All submissions should refer to file number SR–CHX–00–18, and should be submitted by June 12, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15618 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42932; File No. SR–Phlx-99–32]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., to Increase the Maximum Order Size Eligibility for Automatic Execution

June 13, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 1999, 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 Phlx. On September 27, 1999 and January 23, 2000 the Phlx submitted Amendments Nos. 1 and 2 to the proposed rule change, respectively.[3] 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 under the Act, proposes to amend Phlx Rule 1080(c) to increase its maximum order size eligibility for the AUTO–X feature of the Phlx Automated Options Market (''AUTOM''). AUTOM is the Exchange's electronic order routing and delivery system for equity and index options. Currently, AUTO–X automatically executes customer market and marketable limit orders up to fifty contracts. The Exchange now proposes to permit AUTO–X to execute orders of up to seventy-five contracts.

**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 Phlx 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 Phlx 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 purpose of the proposed rule change is to increase the maximum order size eligibility for AUTO–X from fifty to seventy-five contracts. Under the

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Time, Monday through Friday. The E-Session is currently approved to continue through October 1, 2000. *See* Securities Exchange Act Release No. 42463 (February 28, 2000), 65 FR 11817 (March 6, 2000) (SR–CHX–00–02).

[5] E-Session fees have been waived since the beginning of the E-Session. *See* Securities Exchange Act Release Nos. 42089 (November 2, 1999), 64 FR 60864 (November 8, 1999) (SR–CHX–99–23) (waiving fees from October 13, 1999 through December 31, 1999; 42329 (January 11, 2000), 65 FR 3000 (January 19, 2000) (SR–CHX–99–29) (waiving fees from January 1, 2000 through March 1, 2000; and 42486 (March 2, 2000) 65 FR 12601 (March 9, 2000) (SR–CHX–00–05) (waiving fees from March 2, 2000 through June 30, 2000). This proposal simply extends the waiver of the same fees through October 1, 2000. *See* June 12, 2000 telephone conversation between Paul O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Joseph P. Morra, Special Counsel, Division of Market Regulation, SEC.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.03–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange designated the proposal as filed pursuant to Section 19(b)(2) of the Act. *See* Letter from Edith Hallahan, Deputy General Counsel, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated September 23, 1999 (''Amendment No. 1''). In Amendment No. 2, the Exchange deleted a provision in the original proposal that restricted the increase in maximum order size eligibility to 100 options. *See* Letter from Nandita Yagnik, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission dated January 20, 2000 (''Amendment No. 2'').

rules of the Exchange, customer market and marketable limit orders are routed to AUTO–X as follows. Through AUTOM, orders are routed from member firms directly to the appropriate specialist on the trading floor. Certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[4]

The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the displayed price. Therefore, the Exchange believes that increasing automatic execution levels should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchanges notes that this increase from fifty to seventy-five contracts is in line with prior changes to AUTO–X levels.[5]

The Exchange notes that there are many safeguards incorporated into Exchanges rules to ensure the appropriate handling of AUTO–X orders. For example, Phlx Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs quotation guarantees and requires the trading crowd to ensure that public customer orders are filled at the best market, at least to the extent of 10 contracts (''10-contract guarantee''). In addition, Options Floor Procedure Advice F–7 states that the volume guarantees (including AUTO–X levels) are deemed to be the stated size in any bid or offer voiced or displayed on the Options Floor. Therefore, quoted markets are guaranteed up to that size. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO–X trades among specialists and Registered Options Traders (''ROTs''). An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. An increase in the maximum AUTO–X order size does not prevent an ROT from declining to participate on the Wheel. Because the Wheel rotates in 2-lot to 10-lot increments depending upon the size of the order, no single ROT will be allocated the entire seventy-five contracts.[6]

The Exchange also has procedures that permit a specialist to suspend AUTO–X in extraordinary circumstances.[7] AUTOM users are notified of such situations. For example, in extraordinary (fast market) conditions, quotations are disseminated with an ''F'' once the ten-contract guarantee on the screen markets is suspended pursuant to Options Floor Procedure Advice F–10.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital requirement respecting ROTs.[8] Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support trading of options orders as large as 75 contracts.

The Exchange believes that the increase should provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. Increasing the AUTO–X maximum order size should not impose a significant burden on operation or capacity of the AUTOM System.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6[9] of the Act in general, and in particular, with Section 6(b)(5).[10] Specifically, the Exchange believes that the proposal is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market; and protect investors and the public interest. Further, the Exchange believes that the proposal should enhance efficiency by providing automatic executions to a larger number of options orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

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*

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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

The Commission invites interested persons to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In addition, the Commission seeks comment concerning whether the proposed rule change fosters quote competition among options market professionals and enhances investors' interests in obtaining the best available price.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 2054–0609. 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 maybe 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.

[4] *See* Phlx Rule 1080(c).

[5] *See* Securities Exchange Act Release No. 36248 (September 19, 1995), 60 FR 49653 (September 26, 1995) (approving a proposed rule change to increase the maximum automatic execution order size eligibility for public customer market and marketable limit orders for all equity and index options from twenty-five to fifty contracts.)

[6] Unlike ROTs (*see* discussion *supra*), specialists are required to participate on the Wheel. *See* Phlx Rule 1080(g).

[7] *See* Phlx Rule 1080(e) and Advice A–13.

[8] *See* Phlx Rule 703.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

SR–Phlx–99–32 and should be submitted by July 12, 2000.

For the Commission, by the Division of Market regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–15615 Filed 6–20–00; 8:45 am]

**BILLING CODE 8010–01–M**

## DEPARTMENT OF STATE

**[Public Notice 3338]**

### Passport Services, Office of Field Operations, Field Coordination Division; Proposed Information Collection

**AGENCY:** Department of State

**ACTION:** 60-Day Notice of Proposed Information Collection; Statement of Nonreceipt of Passport, DSP–86.

**SUMMARY:** The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

*Type of Request:* Reinstatement.

*Originating Office:* Bureau of Consular Affairs, CA/PPT/FO/FC.

*Title of Information Collection:* Statement of Nonreceipt of Passport.

*Frequency:* On occasion.

*Form Number:* DSP–86.

*Respondents:* Customers who have not received the passports for which they originally applied.

*Estimated Number of Respondents:* 18,000/year.

*Average Hours Per Response:* 5 minutes (1/12hr).

*Total Estimated Burden:* 1,500 hours/year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

**FOR ADDITIONAL INFORMATION:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to R. Michael Holly, U.S. Department Of State, Bureau of Consular Affairs, SA–1, Room H904, 2401 E. Street, NW Washington, DC. 20522–0111. 202–663–2460.

Dated: May 18, 2000.

**George C. Lannon,**

*Deputy Assistant Secretary for Passport Services, U.S. Department of State.*

[FR Doc. 00–15650 Filed 6–20–00; 8:45 am]

**BILLING CODE 4710–06–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST–96–1960]**

### Requirement That Air Carriers Amend Plans To Address the Needs of Families of Passengers Involved in Aircraft Accidents

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

**ACTION:** Notice.

**SUMMARY:** This is to advise certificated air carriers that the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) (Pub. L. 106–181; 114 Stat. 61; April 5, 2000) amends 49 U.S.C. 41113(b) to require, among other things, that certificated air carriers submit to the Department and the National Transportation Safety Board additional assurances for their respective plans to address the needs of families of passengers involved in aircraft accidents. The content and filing requirements for the update to the plans applicable to certificated air carriers are set forth in Title IV, section 402, of AIR–21.

The additional assurances required to be submitted are described in Paragraphs (a)(1), (2), and (3) of section 402 of AIR–21. Under the section, certificated air carriers must submit their updated plans to the Department and the NTSB within 180 days of the statute's enactment. Since AIR–21 was signed into law on April 5, 2000, updated plans are due to be filed not later than Monday, October 2, 2000.

Each certificated carrier should submit its plan in its entirety, that is, the plan as it exists with the new assurances as set forth in AIR–21. We expect each certificated carrier to give a high priority to the timely preparation and submission of its plan and meet the 180-day deadline for filing updated plans required by AIR–21. We note that the requirements of section 41113 apply to all certificated air carriers, including those holding cargo-only authority and those operating small aircraft. We remind all certificated carriers that while a carrier may, if it chooses, contract with an outside source to act as a point of contact and provide services covered in the submitted assurances in the event of an accident, in such a situation full responsibility for complying with the provisions of the law remains with the carrier.

We would also like to take this opportunity to request, on behalf of the NTSB, that each carrier provide the NTSB an updated 24-hour telephone number for its operations center for use in the event of an emergency, and that the number be updated with the NTSB in the future as necessary.

**DATES:** Updated plans are due to be filed not later than Monday, October 2, 2000.

**ADDRESSES:** Plans should be submitted to the Department and the NTSB at the following addresses:

Dockets—Docket OST–96–1960, U.S. Department of Transportation, 400 Seventh Street SW., Room PL 401, Washington, DC 20590;

Erik Grosof, Office of Family Affairs, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the contents of the plans may be addressed to Erik Grosof, Office of Family Affairs, NTSB, at (202) 314–6189. Questions concerning the applicability of the requirements of section 41113 to a particular air carrier should be addressed to Dayton Lehman, Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, DOT, at (202) 366–9342.

Thank you for your cooperation on this important issue.

Issued in Washington, DC, on June 8, 2000.

**Samuel Podberesky,**

*Assistant General Counsel for Aviation Enforcement and Proceedings.*

[FR Doc. 00–15654 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–62–P**

[11] 17 CFR 200.30–3(a)(12)

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

**[Docket No. OST 98–3304]**

### Requirement That Foreign Air Carriers Amend Plans To Address the Needs of Families of Passengers Involved in Aircraft Accidents

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

**ACTION:** Notice.

**SUMMARY:** This is to advise foreign air carriers that the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) (Pub. L. 106–181; 114 Stat. 61; April 5, 2000) amends 49 U.S.C. 41313(c) to require, among other things, that foreign air carriers submit to the Department and the National Transportation Safety Board additional assurances for their respective plans to address the needs of families of passengers involved in aircraft accidents. The content and filing requirements for the update to the plans applicable to foreign air carriers are set forth in Title IV, section 403, of AIR–21.

The additional assurances required to be submitted are described in section 403(a)(1) of AIR–21. Under the section, foreign air carriers must submit their updated plans to the Department and the NTSB within 180 days of the statute's enactment. Since AIR–21 was signed into law on April 5, 2000, updated plans are due to be filed not later than Monday, October 2, 2000.

We note that the Department has exempted from the requirements of section 41313 those foreign carriers that currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft. (Order 98–1–31, issued February 3, 1998.) For purposes of the exemption, small aircraft are those designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds. Unless a foreign carrier falls within the above exemption, the requirements of section 41313 apply to all foreign carriers, including those holding only all-cargo authority.

Each foreign carrier, except those exempted, should submit its plan in its entirety, that is, the plan as it exists with the new assurances as set forth in AIR–21. We expect each affected foreign carrier to give a high priority to the timely preparation and submission of its updated plan and meet the 180-day deadline for submission of the plan required by AIR–21. We remind each foreign carrier that while it may, if it chooses, contract with an outside source to act as a point of contact and provide services covered in the submitted plan in the event of an accident, in such a situation full responsibility for complying with the provisions of the law remains with the foreign carrier. We would also like to take this opportunity to request, on behalf of the NTSB, that each foreign carrier provide the NTSB an updated 24-hour telephone number for its operations center for use in the event of an emergency, and that the number be updated with the NTSB in the future as necessary.

**DATES:** Updated plans are due to be filed not later than Monday, October 2, 2000.

**ADDRESSES:** Plans should be submitted to the Department and the NTSB at the following addresses:

Dockets—Docket OST 98–3304, U.S. Department of Transportation, 400 Seventh Street SW., Room PL 401, Washington, DC 20590;

Erik Grosof, Office of Family Affairs, National Transportation Safety Board, 490 L'Enfant Plaza East, SW., Washington, DC 20594.

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the content of the plans may be addressed to Erik Grosof, Office of Family Affairs, NTSB, at (202) 314–6189. Questions concerning the applicability of the requirements of section 41313 to a particular foreign air carrier should be addressed to George Wellington, Chief, Foreign Air Carrier Licensing Division, Office of International Aviation, DOT, at (202) 366–2391.

Thank you for your cooperation on this important issue.

Issued in Washington, DC, on June 8, 2000.

**Samuel Podberesky,**

*Assistant General Counsel for Aviation Enforcement and Proceedings.*

[FR Doc. 00–15655 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement; Hamilton County; Indiana

**AGENCY:** Federal High Administration (FHWA), DOT.

**ACTION:** Notic of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepred for a proposed highway project in Hamilton County, Indiana.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Dirks, Environmental Specialist, Federal Highway Adiminstration, Room 254, Federal Office Building, 575 North Pennsylvania Street, Indianapolis, Indiana 46204, Telephone (317) 226–7492; or James E. Juricic, Manager of Environmental Assessment Section, Indiana Department of Transportation (INDOT), Room N848, 100 N. Senate Avenue, Indianapolis, Indiana 46204, Telephone (317) 232–5305. Please refer to Project Designation Number 9905500 in any correspondence.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the INDOT, will prepare an environmental impact statement (EIS) for a proposed improvement project along U.S. Route 31 between Interstate 465 on the south and State Route 38 on the north, a distance of approximately 12 miles. Improvements in the project area are needed to reduce overall travel time, reduce traffic congestion and improve traffic safety. The proposed project is part of the state's effort to provide an improved highway corridor between Indianapolis and South Bend. Preparation of the EIS follows the completion of the U.S. Route 31 Hamilton County Major Investment Study in March of 1997.

The range of alternatives under consideration include the do nothing alternative; alternatives that use other transportation modes; alternatives that maximize the efficiency of the present transportation system; alternatives that reduce highway capacity needs by reducing travel demand; and different build alternatives that will increase the capacity of the U.S. Route 31, including upgrading the facility to a limited access, multilane highway. An alternatives screening process will be conducted to evaluate which alternatives will be carried forward in the EIS process for detailed analysis. Different land use scenarios will be developed for each of the alternatives carried forward in the EIS process.

The scoping process will include early coordination with federal, state and local agencies; the preparation of a scoping document; and a scoping meeting. The scoping meeting will be held after all parties have had an opportunity to review the scoping document and proper notice has been given.

A public involvement program has been developed and will consist of a soon to be established project web site at *www.us31indiana.org*; distribution of project newsletters; outreach to county and local officials and community and civic groups; two publis meetings prior to the issuance of the draft EIS; and a public hearing to solicit public input on the draft EIS. The first public meeting is

intended to introduce the public to the project and to answer questions about the project schedule and process & scope? The second public meeting is intended to provide a preview of the purpose and need statement and the complete range of alternatives evaluated as part of the alternatives screening process. The dates of the public meetings, the release of the draft EIS, and the date of the public hearing will be announced to the public as such dates are established and will also be available at the project web site.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

(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.)

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on: June 1, 2000.

**Robert Dirks,**

*Environmental Specialist, Indianapolis, Indiana.*

[FR Doc. 00–15588 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Lycoming 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 Woodward Township and Piatt Township in Lycoming County, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** David W. Cough, P.E., Director of Operations, Federal Highway Administration, 228 Walnut Street, Room 536, Harrisburg, Pennsylvania 17101–1720, Telephone: (717) 221–3411; —OR— Eric E. High, P.E., Special Projects Coordinator, Pennsylvania Department of Transportation, District 3–0, 715 Jordan Avenue, P.O. Box 218, Montoursville, Pennsylvania 17754–0218, Telephone: (570) 368–4258.

**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 improvements to the U.S. Route 220 corridor between Williamsport and Jersey Shore in Lycoming County, Pennsylvania. The proposed action would consist of improvements to U.S. Route 220 between and including its interchanges with PA Route 44 (Main Street) in Jersey Shore and Route 2014 (West Fourth Street) in Williamsport. The approximate project length from the east-west is approximately 13 kilometers (8 miles). Included in the overall project will be the identification of a range of alternatives that meet the identified project needs and supporting environmental documentation and alaysis to recommend a selected alternative for implementation. A complete public involvement program is included as part of the project.

Documentation of the need for the project will be prepared. This process will identify the need for roadway improvements through the study area based on local and regional transportation demand, system linkage and continuity, geometry criteria, safety, and local and regional planning.

Alternatives that will be considered may include, but will not be limited to: No Build; transportation system management (TSM) upgrade of the existing facility for short-term improvements; upgrade of existing roadway network, construction of a new roadway on a new alignment, or a mixture of the upgrade and new alignment alternatives for long-term improvements. 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 public/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 this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to 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.)

Issued on: June 9, 2000.

**James A. Cheatham,**

*FHWA Division Administrator, Harrisburg, Pennsylvania.*

[FR Doc. 00–15611 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–22–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for modification of exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here.

Requests for modifications of exemptions (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before July 6, 2000.

**ADDRESSES:** Address comments to Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available

for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 15, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 9830–M | | Worthington Cylinder Corp., Columbus, OH (See Footnote 1) | 9830 |
| 10595–M | | Allied Universal Corp., Miami, FL (See Footnote 2) | 10595 |
| 10672–M | | Burlington Packaging, Inc., Brooklyn, NY (See Footnote 3) | 10672 |
| 10832–M | | Autoliv ASP, Inc., Ogden, UT (See Footnote 4) | 10832 |
| 11548–M | | Lyondell Chemical Co./Equistar Chemicals LP, Houston, TX (See Footnote 5). | 11548 |
| 11911–M | RSPA–1997–2735 | Transfer Flow, Inc., Chico, CA (See Footnote 6) | 11911 |
| 11967–M | RSPA–1997–2991 | Savage Industries, Inc., Pottstown, PA (See Footnote 7) | 11967 |
| 12130–M | RSPA–1998–4386 | FIBA Technologies, Inc., Westboro, MA (See Footnote 8) | 12130 |
| 12189–M | RSPA–1998–4896 | Automotive Recyclers Association, Fairfax, VA (See Footnote 9) | 12189 |
| 12463–M | RSPA–2000–7423 | Washington State Ferries, Seattle, WA (See Footnote 10) | 12463 |

(*1*) To modify the exemption to allow for the transportation of Class 3 and Division 6.1 materials in non-DOT specification stainless steel cylinders designed in part with DOT Specification 4BA cylinders.

(*2*) To modify the exemption to allow for the transportation of Class 8 materials in tanks cars, to remain standing with unloading connections attached when no product is being transferred.

(*3*) To modify the exemption to authorize alternative configuration combination packaging for liquid and solid hazardous materials without hazard labels or placards.

(*4*) To modify the exemption to include two additional manufacturing sites for the transportation for disposal of unapproved waste explosive materials used in passive restraint systems.

(*5*) To modify the exemption to allow for the transportation of additional Division 4.1 and Division 4.2 materials in DOT Specification cylinders except Specification 8 and 3HT.

(*6*) To modify the exemption to increase the capacity size of non-DOT specification metal refueling tanks containing Class 3 liquids to 119 gallons.

(*7*) To modify the exemption to allow for the transportation of additional Class 3, Class 8 and Division 5.1 materials in tank cars to remain connected during unloading.

(*8*) To modify the exemption to authorize a new portable tank design and the transportation of additional Division 2.2 materials in non-DOT specification insulated portable tanks.

(*9*) To modify the exemption to allow for rail freight and cargo vessel as authorized modes of transportation for shipments of air bag modules or seat belt pre-tensioners.

(*10*) To reissue the exemption originally issued on an emergency basis for the transportation of oxygen, refrigerated liquid, in insulated cylinders or insulated cargo tanks aboard passenger vessels.

[FR Doc. 00–15652 Filed 6–20–00; 8:45 am]

**BILLING CODE 4910–60–M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applicants for Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 21, 2000.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW. Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117 (b); 49 CFR 1.53 (b)).

Issued in Washington, DC, on June 15, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials Exemptions and Approvals.*

NEW EXEMPTIONS

| Application number | Docket number | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12468–N ..... | RSPA–00–7421 | Connecticut Yankee Atomic Power Co., East Hampton, CT. | 49 CFR 173.403, 173.427(a)(1), 173.427(b) or (c). | To authorize the transportation in commerce of a reactor vessel containing low-level radioactive waste, Class 7. (modes 1, 2). |
| 12469–N ..... | RSPA–00–7430 | Department of Energy, Germantown, MD. | 49 CFR 180.407 ..... | To authorize an alternative testing method for DOT-Specification MC 312 and MC 412 cargo tanks used in transporting radioactive materials, Class 7 and corrosive materials, Class 8. (mode 1). |
| 12473–N ..... | RSPA–00–7431 | Old Bridge Metals & Chemicals, Inc., Old Bridge, NJ. | 49 CFR 173.28(b) ..... | To authorize the refilling of UN authorized packaging by the original user of the product with waste material which is being returned to the original manufacturer for treatment without performing leakproofness test prior to refilling. (mode 1). |
| 12474–N ..... | RSPA–00–7432 | Department of Defense (DOD), Falls Church, VA. | 49 CFR 172.204, 173.301(i)&(j) | To authorize the transportation in commerce of two types of non-DOT specification compressed gas cylinders containing Division 2.2 materials. (mode 1). |
| 12475–N ..... | RSPA–00–7484 | Chemetall GmbH Gesellschaft, Langlshiem, DE. | 49 CFR 173.181, 173.28(b)(2) | To authorize the transportation in commerce of lithium alkyls, Division 4.2, in certain 1A1 drums, without undergoing a leakproofness test prior to each refilling when refilled with lithium alkys and certain other liquid hazardous materials. (mode 1). |
| 12476–N ..... | RSPA–00–7485 | Fisher-Rosemount Petroleum, Tulsa, OK. | 49 CFR 173.201, 173.202, 173.203, 173.304, 173.315. | To authorize the manufacture, marking and sale of non-DOT specification container described as a mechanical displacement meter prover mounted on a truck or trailer for use in transporting flammable liquid and flammable gases. (mode 1). |
| 12479–N ..... | RSPA–00–7481 | Luxfer Gas Cylinders, Riverside, CA. | 49 CFR 173.302(a)(1), 175.3 ... | To authorize the manufacture, mark, sale and use of non-DOT specification fiberglass hoop wrapped cylinders for the transportation in commerce of certain compressed gases. (modes 1, 2, 3, 4, 5). |
| 12483–N ..... | RSPA–00–7519 | Security Disposal Inc., Waycross, GA. | 49 CFR 172.101, Col. 8(b)&(c), 173.197. | To authorize the transportation in commerce of solid regulated medical waste, Division 6.2, in a non-DOT specification packaging consisting of a bulk outer packaging and non-bulk inner packagings. (mode 1). |
| 12485–N ..... | RSPA–00–7520 | StanTrans Services, Dallas, TX. | 49 CFR 174.67(i), 174.67(i)&(j) | To authorize rail cars to remain standing while connected without the physical presence of an unloader. (mode 2). |

[FR Doc. 00–15653 Filed 6–20–00; 8:45 am]
BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 15, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 21, 2000, to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1480.

*Regulation Project Number:* FI–34–94 Final.

*Type of Review:* Extension.

*Title:* Hedging Transactions by Members of a Consolidated Group.

*Description:* The information is required by the IRS to aid it in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 17,100.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 4 hours, 27 minutes.

*Frequency of Response:* Other (one time).

*Estimated Total Reporting/Recordkeeping Burden:* 76,050 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224,

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Mary A. Able,**

*Departmental Reports Management Officer.*

[FR Doc. 00–15656 Filed 6–20–00; 8:45 am]
BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

June 14, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 21, 2000.

*Internal Revenue Service (IRS)*

*OMB Number:* 1545–0239.

*Form Number:* IRS Form 5754.

*Type of Review:* Extension.

*Title:* Statement by Person(s) Receiving Gambling Winnings.

*Description:* Section 3402(q)(6) of the Internal Revenue Code (IRC) requires a statement by the person receiving certain gambling winnings when that person is not the winner or is one of a group of winners. It enables the payer to properly apportion the winnings and withheld tax on Form W–2G. We use the information on Form W–2G to ensure that recipients are properly reporting their income.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.

*Estimated Number of Respondents:* 306,000.

*Estimated Burden Hours Per Respondent:* 12 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 61,200 hours.

*OMB Number:* 1545–1059.

*Form Number:* IRS Form 7018 and 7018–A.

*Type of Review:* Extension.

*Title:* Employer's Order Blank for Forms (7018); and Employer's Order Blank for 2000 Forms.

*Description:* Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 1,668,000.

*Estimated Burden Hours Per Respondent:* 3 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 83,400 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports Management Officer.*

[FR Doc. 00–15657 Filed 6–20–00; 8:45 am]

BILLING CODE 4830–01–U

# Corrections

**Federal Register**
Vol. 65, No. 120
Wednesday, June 21, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 141

**[FRL–6580–2]**

**RIN 2040–AD06**

### National Primary Drinking Water Regulations: Public Notification Rule

*Correction*

In rule document 00–9534 beginning on page 25982 in the issue of Thursday, May 4, 2000, make the following correction:

**§141.204 [Corrected]**

1. On page 26037, in the third column, in §141.204(b), the paragraph designated as ''(2)(2)'' should be designated as ''(2)''.

**Appendix B to Subpart Q [Corrected]**

2. On pages 26043 through 20647, appendix B to subpart Q of part 141 is corrected to read as follows:

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| National Primary Drinking Water Regulations (NPDWR) A. Microbiological Contaminants | | | |
| 1a. Total coliform | Zero | See footnote [3] | Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems. |
| 1b. Fecal coliform/E. coli | Zero | Zero | Fecal coliforms and E. coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems. |
| 2a. Turbidity (MCL) [4] | None | 1 NTU [5]/5 NTU | Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches. |
| 2b. Turbidity (SWTR TT) [6] | None | TT [7] | Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches. |
| 2c. Turbidity (IESWTR TT) [8] | None | TT | Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches. |
| B. Surface Water Treatment Rule (SWTR) and Interim Enhanced Surface Water Treatment Rule (IESWTR) violations | | | |
| 3. Giardia lamblia (SWTR/IESWTR) .. | Zero | TT [10] | Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches. |
| 4. Viruses (SWTR/IESWTR). | | | |

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| 5. Heterotrophic plate count (HPC) bacteria [9] (SWTR/IESWTR). 6. Legionella (SWTR/IESWTR). 7. Cryptosporidium (IESWTR). | | | |
| 8. Antimony | 0.006 | 0.006 | Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar. |
| 9. Arsenic | None | 0.05 | Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer. |
| 10. Asbestos (10 μm) | 7 MFL [11] | 7 MFL | Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps. |
| 11. Barium | 2 | 2 | Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure. |
| 12. Beryllium | 0.004 | 0.004 | Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions. |
| 13. Cadmium | 0.005 | 0.005 | Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage. |
| 14. Chromium (total) | 0.1 | 0.1 | Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis. |
| 15. Cyanide | 0.2 | 0.2 | Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid. |
| 16. Fluoride | 4.0 | 4.0 | Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Fluoride in drinking water at half the MCL or more may cause mottling of children's teeth, usually in children less than nine years old. Mottling, also known as dental fluorosis, may include brown staining and/or pitting of the teeth, and occurs only in developing teeth before they erupt from the gums. |
| 17. Mercury (inorganic) | 0.002 | 0.002 | Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage. |
| 18. Nitrate | 10 | 10 | Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. |
| 19. Nitrite | 1 | 1 | Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. |
| 20. Total Nitrate and Nitrite | 10 | 10 | Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome. |
| 21. Selenium | 0.05 | 0.05 | Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation. |
| 22. Thallium | 0.0005 | 0.002 | Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver. |
| C. Lead and Copper Rule | | | |
| 23. Lead | Zero | TT [12] | Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure. |
| 24. Copper | 1.3 | TT [13] | Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor. |
| D. Synthetic Organic Chemicals (SOCs) | | | |
| 25. 2,4–D | 0.07 | 0.07 | Some people who drink water containing the weed killer 2,4–D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands. |

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| 26. 2,4,5–TP (Silvex) | 0.05 | 0.05 | Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems. |
| 27. Alachlor | Zero | 0.002 | Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, or experience anemia, and may have an increased risk of getting cancer. |
| 28. Atrazine | 0.003 | 0.003 | Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties. |
| 29. Benzo(a)pyrene (PAHs) | Zero | 0.0002 | Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties and may have an increased risk of getting cancer. |
| 30. Carbofuran | 0.04 | 0.04 | Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems. |
| 31. Chlordane | Zero | 0.002 | Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver or nervous system, and may have an increased risk of getting cancer. |
| 32. Dalapon | 0.2 | 0.2 | Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes. |
| 33. Di (2-ethylhexyl) adipate | 0.4 | 0.4 | Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties. |
| 34. Di (2-ethylhexyl) phthalate | Zero | 0.006 | Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer. |
| 35. Dibromochloropropane (DBCP) | Zero | 0.0002 | Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer. |
| 36. Dinoseb | 0.007 | 0.007 | Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties. |
| 37. Dioxin (2,3,7,8-TCDD) | Zero | $3\times10^{-8}$ | Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer. |
| 38. Diquat | 0.02 | 0.02 | Some people who drink water containing diquat in excess of the MCL over many years could get cataracts. |
| 39. Endothall | 0.1 | 0.1 | Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines. |
| 40. Endrin | 0.002 | 0.002 | Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems. |
| 41. Ethylene dibromide | Zero | 0.00005 | Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer. |
| 42. Glyphosate | 0.7 | 0.7 | Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties. |
| 43. Heptachlor | Zero | 0.0004 | Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer. |
| 44. Heptachlor epoxide | Zero | 0.0002 | Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer. |
| 45. Hexachlorobenzene | Zero | 0.001 | Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer. |
| 46. Hexachlorocyclo-pentadiene | 0.05 | 0.05 | Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach. |
| 47. Lindane | 0.0002 | 0.0002 | Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver. |
| 48. Methoxychlor | 0.04 | 0.04 | Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties. |
| 49. Oxamyl (Vydate) | 0.2 | 0.2 | Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects. |

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| 50. Pentachlorophenol | Zero | 0.001 | Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer. |
| 51. Picloram | 0.5 | 0.5 | Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver. |
| 52. Polychlorinated biphenyls (PCBs) | Zero | 0.0005 | Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer. |
| 53. Simazine | 0.004 | 0.004 | Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood. |
| 54. Toxaphene | Zero | 0.003 | Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer. |
| E. Volatile Organic Chemicals (VOCs) | | | |
| 55. Benzene | Zero | 0.005 | Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer. |
| 56. Carbon tetrachloride | Zero | 0.005 | Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer. |
| 57. Chlorobenzene (monochlorobenzene). | 0.1 | 0.1 | Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys. |
| 58. *o*-Dichlorobenzene | 0.6 | 0.6 | Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems. |
| 59. *p*-Dichlorobenzene | 0.075 | 0.075 | Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood. |
| 60. 1,2-Dichloroethane | Zero | 0.005 | Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer. |
| 61. 1,1-Dichloroethylene | 0.007 | 0.007 | Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver. |
| 62. *cis*-1,2-Dichloroethylene | 0.07 | 0.07 | Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver. |
| 63. *trans*-1,2-Dichloroethylene | 0.1 | 0.1 | Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver. |
| 64. Dichloromethane | Zero | 0.005 | Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer. |
| 65. 1,2-Dichloropropane | Zero | 0.005 | Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer. |
| 66. Ethylbenzene | 0.7 | 0.7 | Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys. |
| 67. Styrene | 0.1 | 0.1 | Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system. |
| 68. Tetrachloroethylene | Zero | 0.005 | Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer. |
| 69. Toluene | 1 | 1 | Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver. |
| 70. 1,2,4-Trichlorobenzene | 0.07 | 0.07 | Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands. |
| 71. 1,1,1-Trichloroethane | 0.2 | 0.2 | Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system. |

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| 72. 1,1,2-Trichloroethane | 0.003 | 0.005 | Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems. |
| 73. Trichloroethylene | Zero | 0.005 | Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer. |
| 74. Vinyl chloride | Zero | 0.002 | Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer. |
| 75. Xylenes (total) | 10 | 10 | Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system. |
| F. Radioactive Contaminants | | | |
| 76. Beta/photon emitters | Zero | 4 mrem/yr [14] | Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer. |
| 77. Alpha emitters | Zero | 15 pCi/L [15] | Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer. |
| 78. Combined radium (226 & 228) | Zero | 5 pCi/L | Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer. |
| G. Disinfection Byproducts (DBPs), Byproduct Precursors, and Disinfectant Residuals: Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA sets standards for controlling the levels of disinfectants and DBPs in drinking water, including trihalomethanes (THMs) and haloacetic acids (HAAs) [16] | | | |
| 79. Total trihalomethanes (TTHMs) | N/A | 0.10/ 0.080 [17] [18] | Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer. |
| 80. Haloacetic Acids (HAA) | N/A | 0.060 [19] | Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer. |
| 81. Bromate | Zero | 0.010 | Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of getting cancer. |
| 82. Chlorite | 0.08 | 1.0 | Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorite in excess of the MCL. Some people may experience anemia. |
| 83. Chlorine | 4 (MRDLG) [20] | 4.0 (MRDL) [21] | Some people who use water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort. |
| 84. Chloramines | 4 (MRDLG) | 4.0 (MRDL) | Some people who use water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia. |
| 85a. Chlorine dioxide, where any 2 consecutive daily samples taken at the entrance to the distribution system are above the MRDL. | 0.8 (MRDLG) | 0.8 (MRDL) | Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. *Add for public notification only:* The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers. |
| 85b. Chlorine dioxide, where one or more distribution system samples are above the MRDL. | 0.8 (MRDLG) | 0.8 (MRDL) | Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant women who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. |

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

| Contaminant | MCLG [1] mg/L | MCL [2] mg/L | Standard health effects language for public notification |
|---|---|---|---|
| 86. Control of DBP precursors (TOC) | None | TT | *Add for public notification only:* The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure. Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection byproducts. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs). Drinking water containing these byproducts in excess of the MCL may lead to adverse health effects, liver or kidney problems, or nervous system effects, and may lead to an increased risk of getting cancer. |
| H. Other Treatment Techniques | | | |
| 87. Acrylamide | Zero | TT | Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer. |
| 88. Epichlorohydrin | Zero | TT | Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer. |

[FR Doc. C0–9534 Filed 6–20–00; 8:45 am]
**BILLING CODE 1505–01–D**

Federal Register

**Wednesday,**
**June 21, 2000**

## Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Parts 121 and 139**
**Certification of Airports; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 121 and 139**

**[Docket No. FAA–2000–7479; Notice No. 00–05]**

**RIN 2120–AG96**

## Certification of Airports

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to revise the current airport certification regulation and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats. In addition, changes are proposed to address National Transportation Safety Board (NTSB) recommendations and petitions for exemptions and rulemaking. A section of an air carrier operation regulation also would be amended to conform with proposed changes to airport certification requirements. The FAA believes that these proposed revisions are necessary to ensure safety in air transportation and to provide a comparable level of safety at all certificated airports.

**DATES:** Comments must be submitted on or before September 19, 2000.

**ADDRESSES:** Comments on this proposed rulemaking should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–2000–7479, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov at any time. Commenters who wish to file comments electronically, should follow the instructions on the DMS web site.

**FOR FURTHER INFORMATION CONTACT:** Linda Bruce, Airport Safety and Operations Division (AAS–300), Office of Airport Safety and Standards, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone: (202) 267–8553, or E-mail: linda.bruce@faa.gov.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

The Administrator will consider all comments received on or before the closing date before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals contained in this rulemaking may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a pre-addressed, stamped postcard with those comments on which the following statement is made: ''Comments to Docket No. FAA–2000–7479.'' The postcard will be date stamped and mailed to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: 703–321–3339), or the Government Printing Office's (GPO's) electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web pages at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

### Background

*History*

Since 1970, the FAA Administrator has had the statutory authority to issue airport operating certificates to airports serving certain air carriers and to establish minimum safety standards for the operation of those airports. This authority is currently found in Title 49, United States Code (U.S.C.) section 44706, Airport operating certificates. The FAA uses this authority to issue requirements for the certification and operation of certain land airports. These requirements are contained in Title14, Code of Federal Regulations part 139 (14 CFR part 139), Certification and Operations: Land Airports Serving Certain Air Carriers, as amended.

Until recently, this statutory authority was limited to those land airports serving passenger operations of an air carrier that is conducted with an aircraft having a seating capacity of more than 30 passengers. However, this authority was broadened by the Federal Aviation Administration Reauthorization Act of 1996. Section 44706 was amended to allow the FAA to certificate airports, with the exception of those located in the State of Alaska, that serve any scheduled passenger operation of an air carrier operating aircraft designed for more than 9 passenger seats but less than 31 passenger seats. FAA's existing authority to certificate airports serving air carrier operations conducted in aircraft with more than 30 seats remained unchanged.

This amendment was proposed by the Secretary of Transportation in response to a recommendation made by the NTSB that the FAA seek authority from Congress to issue certificates to airports serving commuter airlines. In November 1994, the NTSB released its findings resulting from a study of commuter airline safety.[1] This study identified several safety improvements that the NTSB felt would improve the commuter airline safety record. While this study, and subsequent recommendations, focused on airline and aircraft operations, it also was critical of the FAA for not requiring airports serving commuter operations to maintain their facilities in the same manner as airports serving major air carriers.

This was not the first attempt to obtain the legislative authority to certificate commuter airports. In 1987, the General Accounting Office (GAO)

[1] *Safety Study: Commuter Airline Safety,* National Transportation Safety Board, NTSB/SS–94/02, November 1994.

issued a safety report on the certification of small airports.[2] Similar to the NTSB findings, the GAO concluded that airport safety would be enhanced if all airports serving scheduled air carrier service were to be certificated and recommended the FAA include such facilities in its airport certification program. The FAA concurred with the GAO's findings, but determined its statutory authority to certificate airports was limited to airports that serve scheduled and unscheduled passenger operations of air carrier aircraft with more than 30 seats. A proposed amendment to broaden this authority was submitted to Congress, but the measure was not enacted.

The 1996 amendment to the statute did not mandate the issuance of airport certificates to airports serving commuter air carriers. It only provides general authority under which the FAA may promulgate appropriate regulatory standards. The FAA proposes to use this authority to extend to airports its policy of one level of safety for all covered air carriers. In response to a series of commuter accidents and the NTSB's findings, the FAA established this policy of one level of safety, and comprehensively revised regulations pertaining to the air carrier operations, specifically 14 CFR parts 121 and 135, to ensure similar safety standards among air carriers. Similarly, this proposal would establish minimum safety standards among all covered airports (airports that the FAA has the authority to certificate) served by air carriers.

Further, this proposal would revise and clarify several safety and operational requirements that have become outdated. The last major revision of part 139 occurred in November 1987, and since then, industry practices and technology have changed. In the subsequent years, the FAA has gathered data on the effectiveness of part 139 requirements, (primarily through joint industry/FAA working groups, field research and periodic airport certification inspections), and proposes to use this rulemaking opportunity to update part 139 requirements.

*Current Requirements*

Under existing part 139, the FAA requires airport operators to comply with certain safety requirements prior to serving operations of large air carrier aircraft (aircraft with more than 30 seats). When an airport operator satisfactorily complies with such requirements, the FAA issues to that facility an airport operating certificate that permits an airport to serve large air carriers. These safety requirements cover a broad range of airport operations, including the maintenance of runway pavement, markings and lighting; notification of air carriers of unsafe or changed conditions; and preparedness for aircraft accidents and other emergencies. The FAA periodically inspects these airports to ensure continued compliance with part 139 safety requirements.

Under existing rules, the FAA issues two types of airport operating certificates depending on the type of air carrier operations an airport serves. Operators of airports that serve scheduled operations of large air carrier aircraft are issued an Airport Operating Certificate (AOC), commonly referred to as a ''full'' certificate. As these airport operators regularly serve large air carrier operations, they must fully comply with all part 139 requirements. Of the approximately 660 certificated airports, approximately 430 airport operators hold a ''full'' certificate. Conversely, airport operators serving only unscheduled operations of large air carrier aircraft are required to have a Limited Airport Operating Certificate (LAOC), known as a ''limited'' certificate. Approximately 135 airport operators hold a ''limited'' certificate. Air carrier operations in large aircraft are so infrequent at these facilities that their operators are only required to comply with part 139 in a limited manner. For example, existing § 139.213 requires airport operators holding a ''limited'' certificate to comply with only certain pavement, lighting, marking and emergency response requirements. Such airports are typically located in remote communities or support seasonal activities, such as skiing during winter months.

The remaining certificated airports (approximately 90) are Department of Defense (DOD) airports serving air carrier operations. These facilities are issued an airport operating certificate but are exempted from part 139 requirements under FAA Exemption No. 5750B.

The FAA requires all operators of certificated civilian airports to develop, and comply with, a written document that details how the airport operator will comply with the requirements of part 139. As every airport is unique and local circumstances vary, this written document sets forth the site-specific procedures, equipment, and personnel that each airport operator uses to comply with part 139 requirements. This document at an airport with a ''full'' certificate is called the Airport Certification Manual (ACM). At an airport with a ''limited'' certificate, it is known as Airport Certification Specifications (ACS).

*Enforcement Action*

The FAA can impose a civil penalty of $1,000 per day per violation on operators of airports that are currently certificated under part 139 (airports serving scheduled and unscheduled operations of large air carrier aircraft). If this proposal is adopted, the FAA also could impose monetary penalties on airport operators serving scheduled operations of small air carrier aircraft for any failure to comply with the requirements of their certification manual or part 139. However, the FAA does consider mitigating circumstances, including an airport operator's willingness to correct any deficiencies and ability to pay civil penalties.

In its inspection role, the FAA works with airport operators and encourages a cooperative relationship between the certificate holder and inspectors, and commonly uses administrative actions to have most discrepancies corrected. Civil penalties and in extreme cases, certificate action, are levied against airport operators only as a last resort to gain compliance.

*New Certificate Holders*

If this proposal is adopted, airport operators not currently certificated by the FAA would be required to apply for a certificate under part 139 in order to serve certain air carrier operations. Such airport operators would contact the appropriate FAA Regional Airports Division office to initiate the application process. Once contacted, the FAA Regional Airports Division office would interview the airport operator to obtain information about the airport and air carrier operations served (or anticipated to be served). If the FAA determines that a certificate is necessary, the airport operator would be provided an application for certification (FAA Form 5280–1, Airport Operating Certification Application) and guidance materials.

The airport operator would submit a completed application (as specified under proposed § 139.103) to the FAA Regional Airports Division office for approval. As part of the application package, the airport operator would provide the FAA two copies of its proposed airport certification manual and written documentation as to when air carrier service will begin. The FAA would review the application and associated documentation to ensure that

[2] *Aviation Safety: Commuter Airports Should Participate in the Airport Certification Program,* U.S. General Accounting Office, GAO/RCED–88–41, November 1987.

they are complete and conduct an inspection of the airport for compliance with the requirements of part 139.

The FAA will issue an airport operating certificate if the application and other required documentation meets the provision of part 139, and the inspection reveals that airport is in compliance with part 139. The certificate may include other provisions the FAA finds necessary to ensure safety in air transportation (see discussion of proposed § 139.103 Application for certificate and § 139.105 Inspection authority).

Assistance is available for applicants applying for an airport operating certificate. FAA regional offices offer guidance and support to airport operators in complying with part 139. Access to the FAA is available by telephone, e-mail, conventional mail, regional newsletters, and on-site visits. In addition, the FAA makes available to airport operating certificate applicants, free of charge, advisory circulars, informational brochures, and safety placards to assist the certificate holder in complying with the requirements of part 139. The FAA regional offices also will assist airport operators in applying for Federal funds that may be used to comply with the requirement of part 139.

*The Role of the Aviation Rulemaking Advisory Committee*

The FAA has established an Aviation Rulemaking Advisory Committee (ARAC) to provide advice and recommendations to the FAA Administrator concerning a range of FAA's rulemaking activity, including air carrier operations, airman certification, aircraft certification, airports, security, and noise. The committee affords the FAA a forum to easily obtain direct, firsthand information and insight from affected interests through meeting together and exchanging ideas with respect to proposed rules and existing rules that should be revised or eliminated. While the activities of the ARAC do not circumvent the normal coordination process or the public rulemaking procedures, the committee's recommendations on a particular issue or proposed rule are taken under consideration by the FAA and fully disclosed in the public docket.

The ARAC consists of approximately 65 government, industry, labor, and consumer advocacy organizations selected by the FAA to represent various viewpoints of those impacted by FAA regulations. These members are organized into several issue areas to address specific technical subjects, including airport certification. The ARAC only undertakes those tasks requested by the FAA. Meetings of the ARAC are open to the public and interested persons with expertise in the subject matter are invited to participate.

To assist in the certification of airports serving smaller air carrier operations, the FAA requested the ARAC's advice and recommendations on what requirements should be applicable to airports that have scheduled service with aircraft having a seating capacity of 10–30 seats [60 FR 21582, May 2, 1995]. In developing these recommendations, the FAA asked the ARAC to consider alternatives to minimize the operational burden on smaller facilities, including options for aircraft rescue and firefighting (ARFF) services. The FAA also suggested the ARAC conduct a survey of affected airports to gauge the impact of any proposed requirement. At the time of this request, the FAA did not have the statutory authority to regulate airports serving scheduled operations of air carrier aircraft with 10–30 seats.

The ARAC accepted this task and established a Commuter Airport Certification Working Group to develop recommendations on this issue. Comprised of members of the main committee, the working group's membership included representatives from the following organizations:

1. Air Line Pilots Association
2. Aircraft Owners and Pilots Association
3. American Association of Airport Executives
4. National Air Transportation Association
5. National Association of State Aviation Officials
6. Regional Airline Association

The FAA and Landrum and Brown, an airport planning and engineering consulting firm, also provided technical support.

Over the course of a year, the Commuter Airport Certification Working Group met five times to research the issue and develop recommendations for the ARAC. The working group initially endeavored to establish a voluntary industry standard consistent with the FAA's lack of authority to regulate airports serving commuter operations. However, after the passage of Public Law 104–264, the FAA requested the working group to immediately finish its report and to take a regulatory approach to the certification of airports serving small air carrier aircraft. This action was based on the FAA's decision to exercise its new authority to regulate airports serving small air carrier operations.

While the working group agreed on many issues, two members (primarily the Air Line Pilots Association (ALPA)) disagreed with several of the group's recommendations. This minority differed on six regulatory requirements, including marking and lighting; ARFF; and handling of hazardous substances and materials. Subsequently, the working group developed both a majority and minority position at the FAA's request. Individual working group members also provided comments on issues when their respective organizations differed from the position taken by the ARAC working group.

In February 1997, both the majority and minority views of the working group, and those of individual work group members, were presented to the FAA. Overall, the working group majority recommended that a non-regulatory approach to improve commuter airport safety could accomplish the same level of safety as regulating these airports. In light of the proposed rulemaking, the majority suggested that such a regulation should focus on accident prevention rather than accident mitigation, particularly due to the limited public funds available to these small airports.

Despite its opposition to a rulemaking, the ARAC did provide, as requested by the FAA, proposed regulatory language for the certification of airports serving scheduled operations of small air carrier aircraft. The FAA considered this proposed regulatory language in this rulemaking and where possible, discusses ARAC's concerns for each proposed requirement in the following Section-by-Section analysis. As appropriate, both the majority and minority positions are discussed. However, the decisions in this document are the FAA's. Neither the majority opposition to rulemaking, nor the minority support of rulemaking, was a deciding factor in the FAA's decision to institute this rulemaking.

As requested by the FAA, the ARAC also conducted a survey of airports that might be affected to determine what safety practices are already being conducted and the potential operational and economic impact if these airports were to comply with existing part 139 requirements. This survey requested information on rescue and firefighting capabilities, airport staff, certification status, annual enplanements, existing marking, lighting and signs, and capital and recurring costs of certain equipment and procedures. The results of this survey are included with the ARAC final recommendations on commuter airport certification, filed in the public docket (see **ADDRESSES**). These survey

results also are discussed in the economic analysis associated with this rulemaking. Also, a copy of the economic analysis is filed in the docket and a summary of it is included in this proposal.

Much of the work done by the ARAC was the result of its members' willingness to donate their time and resources to travel to meetings and conduct research. The FAA wishes to recognize this contribution and appreciates the working group's effort to develop recommendations that represent a balance of safety and economic considerations.

*Alternatives*

This NPRM addresses two issues: (1) the revision of certain requirements of 14 CFR part 139, and (2) certification requirements of airports serving scheduled air carrier operations with 10–30 seat aircraft under 14 CFR part 139.

The FAA considered alternatives for each of these issues. Based on this analysis, the FAA determined that it was necessary to revise 14 CFR part 139 and that the revised part 139 should include the certification of airports serving scheduled air carrier operations with 10–30 passenger seat aircraft. See a more detailed description of these alternatives in the ''Description of Alternatives'' section that follows the ''Section-by-Section Analysis.''

**General Discussion of the Proposal**

This proposal would comprehensively revise the airport certification process by including airports serving small air carrier aircraft to ensure these airports meet a minimum level of safety comparable to airports already certificated. Operators of airports serving small air carrier aircraft and currently not regulated under part 139 (approximately 40 airports) would be required to develop and implement an ACM, and to comply with certain safety and operational requirements. These airport operators, however, would be permitted some flexibility in complying with more burdensome requirements.

In addition to serving large, unscheduled air carrier aircraft, approximately 120 of the approximately 135 airports holding a LAOC also serve scheduled small air carrier aircraft. To address these additional operations, this proposal would require the operators of these 120 airports to implement existing safety measures (such as aircraft rescue and firefighting) on a more frequent basis and comply with additional safety requirements. The remaining 15 airport operators holding a LAOC would continue to comply with part 139 requirements as they do today.

Likewise, this proposal would require airport operators holding an AOC (or a ''full'' certificate), approximately 430 airports, to continue to comply with part 139 requirements as they do today. These airport operators would be required to revise their certification manuals and comply with proposed modifications to existing requirements. The operators of approximately 50 of these airports also may be required to implement certain safety measures on a more frequent basis if they serve small air carrier operations that do not occur concurrently with large air carrier aircraft operations.

In addition, this proposal would clarify that airports operated by the United States government, including DOD, are not subject to part 139. Subsequently, the 90 DOD airports currently certificated under part 139 would no longer need to request an exemption from part 139 requirements to continue serving air carrier operations.

To minimize confusion resulting from the inclusion of airports serving small air carrier aircraft operations into the FAA's existing airport certification program, the FAA is proposing to reclassify airport operating certificates and certification manuals. Instead of differentiating between an AOC and a LAOC, and creating additional types of airport operating certificates, this proposal would provide for only one type of certificate, an AOC, and no longer make a distinction between an ACM and an ACS. All airport certificate holders would be required to adopt and implement an ACM, regardless of size and type of air carrier operations.

All holders of airport operating certificates would be issued new certificates, including those existing airport operators holding ''full'' or ''limited'' certificates. Operators of currently certificated airports would not be required to reapply for an airport operating certificate. if this proposal is adopted, the FAA would convert existing certificates, as appropriate.

The FAA proposes to continue to distinguish between airports that serve different sizes or types of air carriers, and establish requirements appropriate for each type of airport. Under this proposal, similar airports would be grouped into four new classes, I–IV, and requirements are proposed for each new class of airport. This approach would ensure that airports serving small air carrier aircraft or unscheduled air carrier operations (*e.g.,* charter flights) are not unduly burdened with requirements more appropriate for airports serving frequent operations of large air carriers. In addition, these new classes of airports address those airports that serve a mixture of air carrier operations.

Airports serving all types of scheduled operations of large air carrier aircraft, and any other type of air carrier operations, would be known as Class I airports. Operators of these airports would be required to comply with all part 139 requirements. Essentially, all airport operators holding an existing ''full'' certificate would become Class I airports.

Class II airports would be those airports that serve scheduled operations of small air carrier aircraft (10–30 seats) and unscheduled operations of larger air carrier aircraft (more than 30 seats). Airports that would be classified as Class II would be those existing ''limited'' certificate airports that serve scheduled operations by small air carrier aircraft.

Class III airports would be those airports that serve only scheduled operations of air carrier aircraft with 10–30 seats. Class III airports would be those facilities newly certificated as the result of this rulemaking.

Class IV airports would be those airports currently with a ''limited'' certificate serving only unscheduled air carrier operations in aircraft with more than 30 seats.

Airports in the State of Alaska that serve large air carrier operations would continue to be certificated under part 139, as Class I or Class IV airports. No requirements are proposed, as specified in the authorizing statute, for those airports in the State of Alaska that only serve scheduled operations of smaller air carrier operations.

The FAA currently requires operators of certificated airports to develop an ACM or ACS, depending on the type of certification, to detail how the airport operator will comply with the requirements of part 139. As every airport is unique, it is difficult to impose requirements that prescribe exacting technical standards that would work at every airport. Instead the FAA sets forth performance-based standards that airport operators implement in the manner best suited to their facilities.

In this manner, the FAA can vary requirements that airport operators must comply with. For example, existing § 139.213 requires operators of ''limited'' certificated airports to include in their ACS procedures to comply with seven operational requirements found in Subpart D, whereas operators of ''full'' certificated airports must provide for all part 139 requirements in their manual. This proposal takes a similar approach

and proposes different requirements and manual content for each new airport class.

Under this proposal, the requirements for manual content would vary between the airport classes, with the most comprehensive manual required of Class I airports. Operators of Class I airports would have to comply with more safety requirements than the operators of Class II, III, and IV airports as they serve more complex and varied air carrier operations.

As a consequence of these proposed changes, several existing sections of the regulation would be combined and the current numbering scheme of subparts C and D would be altered. The following chart illustrates these changes, comparing existing section titles and numbering against those proposed.

COMPARISON OF SECTION TITLES AND NUMBERING BETWEEN EXISTING AND PROPOSED PART 139

| | Existing part 139 | Proposed part 139 |
|---|---|---|
| Subpart A—General | § 139.1 Applicability | § 139.1 Applicability. |
| | § 139.3 Definitions | § 139.3 Delegation of authority (new section—§ 139.3 would be moved to proposed § 139.5). |
| | § 139.5 Standards and procedures for compliance with the certification and operations requirements of this part. | § 139.5 Definitions (section number change—§ 139.5 would be moved to proposed § 139.7). |
| | | § 139.7 Methods and procedures for compliance (title and section number change). |
| Subpart B—Certification | § 139.101 Certification requirements: General | § 139.101 General requirements (title change). |
| | § 139.103 Application for certificate | § 139.103 Application for certificate. |
| | § 139.105 Inspection authority | § 139.105 Inspection authority (revised section—§§ 139.105 and .301 would be combined to form proposed § 139.305). |
| | § 139.107 Issuance of certificate | § 139.107 Issuance of certificate. |
| | § 139.109 Duration of certificate | § 139.109 Duration of certificate. |
| | § 139.111 Exemptions | § 139.111 Exemptions. |
| | § 139.113 Deviations | § 139.113 Deviations. |
| Subpart C—Airport Certification Manual (title change). | § 139.201 Airport operating certificate: Airport certification manual. | 139.201 General requirements. (title change—§§ 139.201, .203, .207, .209, .211, and .215 would be combined to form proposed § 139.201). |
| | § 139.203 Preparation of airport certification manual | § 139.203 Contents of airport certification manual (new section—§§ 139.205 and 139.213 would combined to form proposed § 139.203). |
| | § 139.205 Contents of airport certification manual | § 139.205 Amendment of airport manual (section number change—§ 139.217 would be moved to proposed § 139.205). |
| | § 139.207 Maintenance of airport certification manual | |
| | § 139.209 Limited airport operating certificate: Airport certification specifications. | |
| | § 139.213 Contents of airport certification specifications | |
| | § 139.215 Maintenance of airport certification specifications. | |
| | § 139.217 Amendment of airport certification manual or airport certification specifications. | |
| Subpart D—Operations | § 139.301 Inspection authority | § 139.301 Records (new section—§ 139.301 would be moved to proposed § 139.105). |
| | § 139.303 Personnel | § 139.303 Personnel. |
| | § 139.305 Paved areas | § 139.305 Paved areas. |
| | § 139.307 Unpaved areas | § 139.307 Unpaved areas. |
| | § 139.309 Safety areas | § 139.309 Safety areas. |
| | § 139.311 Marking and lighting | § 139.311 Marking, signs, and lighting (title change). |
| | § 139.313 Snow and ice control | § 139.313 Snow and ice control. |
| | § 139.315 Aircraft rescue and firefighting: Index determination. | § 139.315 Aircraft rescue and firefighting: Index determination. |
| | § 139.317 Aircraft rescue and firefighting: Equipment and agents. | § 139.317 Aircraft rescue and firefighting: Equipment and agents. |
| | § 139.319 Aircraft rescue and firefighting: Operational requirements. | 139.319 Aircraft rescue and firefighting: Operational requirements. |
| | 139.321 Handling and storing of hazardous substances and materials. | 139.321 Aircraft rescue and firefighting: Exemptions (new section—existing § 139.321 would be moved to proposed § 139.323). |
| | § 139.323 Traffic and wind direction indicators | § 139.323 Handling and storing of hazardous substances and materials (section number change). |
| | § 139.325 Airport emergency plan | § 139.325 Traffic and wind direction indicators (section number change). |
| | § 139.327 Self-inspection program | § 139.327 Airport emergency plan (section number change). |
| | § 139.329 Ground vehicles | § 139.329 Self-inspection program (section number change). |
| | § 139.331 Obstructions | § 139.331 Ground vehicles (section number change). |
| | § 139.333 Protection of navaids | § 139.333 Obstructions (section number change). |

COMPARISON OF SECTION TITLES AND NUMBERING BETWEEN EXISTING AND PROPOSED PART 139—Continued

| | Existing part 139 | Proposed part 139 |
|---|---|---|
| | § 139.335 Public protection | § 139.335 Protection of navaids (section number change). |
| | § 139.337 Wildlife hazard management | § 139.337 Public protection (section number change). |
| | § 139.339 Airport condition reporting | § 139.339 Wildlife hazard management (section number change). |
| | § 139.341 Identifying, marking, and reporting construction and other unserviceable areas. | § 139.341 Airport condition reporting (section number change). |
| | § 139.343 Noncomplying conditions | § 139.343 Identifying, marking, and reporting construction and other unserviceable areas (section number change). |
| | | § 139.345 Noncomplying conditions (section number change). |

As noted earlier, changes are proposed to operational and safety requirements. The specifics of these revisions are discussed in detail in the following section, ''Section-by-Section Analysis.'' The proposed revisions reflect changes to technology and industry practice. This action does not address runway friction measurement (both winter and maintenance), runway distance remaining signs, and certain requirements related to ARFF equipment, training, and extinguishing agents. The FAA is continuing to review these issues with industry representatives (primarily through the ARAC) and may propose rulemaking as a result of these efforts in a separate action.

Throughout the proposed rule, references are made to 49 U.S.C. 44706. This statute is the recodification of the FAA's authority to prescribe airport certification regulations previously found in the Federal Aviation Act of 1958, 49 U.S.C. App. 1432 *et seq.*

Additionally, the FAA proposes to revise the title of 14 CFR part 139, ''Certification and Operations: Land Airports Serving Certain Air Carriers'' to ''Certification of Airports.''

**Request for Additional Information**

Throughout this proposal, the FAA is requesting economic and operational information on specific topics. As explained in the following Section-by-Section Analysis, the FAA intends to use this information to further analyze certain proposed requirements. Additional information is requested on the following subject areas:

1. *Certification of heliports.* Under the discussion of proposed § 139.1, the FAA is requesting comments on the need to certificate heliports, including recommendations on certification requirements and any associated safety and economic considerations that should be addressed.

2. *Reduction or revocation of an airport operating certificate.* Under proposed § 139.109, information is requested as to why it would be more costly for an airport operator to surrender an airport operating certificate and then later to regain it, than it is to maintain a certificate uninterrupted.

3. *Retro-reflective runway and taxiway signs.* The FAA is soliciting comments under proposed § 139.311 on the use of retro reflective guidance and directional signs at airports serving small or unscheduled air carrier aircraft.

4. *ARFF Exemption.* The FAA requests comments on the new ARFF exemption process delineated under proposed § 139.321.

5. *Implementation.* Finally, the FAA is requesting comments on various elements of the implementation schedule, should this proposal be adopted.

**Section-by-Section Analysis**

*Subpart A—General*

Section 139.1 Applicability

Section 139.1 establishes that part 139 prescribes rules for the certification and operation of airports serving certain air carrier operations. This proposal expands this section by amending and reorganizing existing language into new paragraphs (a) and (b).

New paragraph (a) would incorporate a new group of airports that would require an airport operating certificate (AOC) before serving certain air carrier operations. In addition to those airports already certificated under part 139, airports serving scheduled operations of air carrier aircraft seating 10 to 30 passengers would require a certificate under this part. This expansion of the rule's applicability would reflect recent revisions to 49 U.S.C. 44706, that authorized the Administrator to issue an AOC to airports serving any scheduled operations of an air carrier operating aircraft designed for more than 9 passenger seats but less than 31 passenger seats.

Throughout paragraph (a), references to the term ''aircraft seating capacity'' would be changed to ''aircraft design.'' This proposal would more accurately reflect how the FAA and other civil aviation authorities certificate air carrier aircraft for passenger operations. This revision would have no effect on how aircraft passenger seating capacity is determined. An FAA-issued aircraft type certificate and its foreign equivalent specify passenger seating capacity and may only be changed by amendment to the aircraft type certificate.

Further, the FAA proposes to move language currently found in § 139.101(a) to new paragraph § 139.1(a). The phrase specifies that part 139 is applicable to land airports in the United States, the District of Columbia, or any U.S. territory or possession. This language is more appropriate in § 139.1, Applicability.

Proposed paragraph § 139.1(b) would group together the type of airports that would be exempt from part 139. As currently is the case, airports serving air carrier operations only because they have been designated as alternate airports (under § 121.590) would not be certificated under part 139. The revised part 139 also would not be applicable, as specified in the authorizing statute, at airports in the State of Alaska that serve scheduled operations of air carrier aircraft seating 10–30 passengers. However, airports in the State of Alaska that serve scheduled and/or unscheduled operations of air carrier aircraft with more than 30 passenger seats and serve smaller scheduled air carrier operations must be certificated under part 139. Under this proposal, these airports would be certificated as a Class I or Class IV airport because they serve larger air carrier operations.

In addition, airports operated by U.S. government agencies would not be required to comply with part 139. The FAA has issued airport operating certificates, under FAA Exemption No.

5750, to Department of Defense (DOD) airports that serve civilian commercial carriers. Standards for military airports, and others operated by other branches of the Federal government (e.g., NASA, Dept. of Energy), differ from those prescribed under part 139.

The FAA does not have the statutory authority to regulate airports operated by U.S. government agencies. Since the continuance of commercial flights into these facilities is necessary to support federal government requirements, the FAA proposes to eliminate exemptions to U.S. government entities, (such as DOD's exemption to part 139) but will allow U.S. government entities to apply for an AOC for air carrier operations. Changes to part 121 are proposed to permit air carriers to use such airports (see discussion under proposed § 121.590, Use of certificated land airports).

This does not address airports where civilian and military operations commingle. These airports are known as either ''joint-use airports'' or ''shared-use airports.''

Joint-use airports are owned by the U.S. government, which leases or surpluses a portion of their facility to the local government for civilian air carrier operations. Shared-use airports are co-located U.S. and local government facilities at which portions of the movement areas, such as runways, taxiways, and ramps are shared. Under this proposal, civilian air carrier operations of either a joint-use airport or a shared-use airport will come under the purview of part 139.

Also, this proposal excludes heliports. The focus of this proposal is on the safety needs of airports serving fixed wing aircraft. While concerned with the safe operations of helicopters, the FAA believes certification of heliports should be handled separately and is considering how to certify these facilities. The FAA is requesting comments on the need to certificate heliports. The FAA requires specific recommendations on certification requirements and associated safety and economic considerations.

Section 139.3 Delegation of Authority

Under this proposal, existing § 139.3, titled ''Definitions,'' would be moved to proposed § 139.5. Proposed § 139.3 would be titled ''Delegation of Authority.'' This section would be new.

This new section would set forth FAA's existing delegation authority that allows FAA employees to act on behalf of the FAA Administrator in the oversight of the certification of airports. As proposed, the Administrator's delegation of authority has not changed, and the FAA's Associate Administrator for Airports could act in the capacity of the Administrator.

Section 139.5 Definitions

In this proposal, existing § 139.3 would be redesignated as proposed § 139.5. Existing § 139.3 establishes terms, and their definitions, used in part 139. The definitions contained in this revised section reflect proposed changes made throughout the rule. As such, several existing definitions have been modified or deleted and new definitions are proposed.

The FAA proposes to delete the existing term ''air carrier aircraft.'' Two new terms, ''large air carrier aircraft'' and ''small air carrier aircraft,'' have been added to part 139 to differentiate requirements of airports serving differing sizes of air carrier aircraft. Proposed exclusively for part 139, these new definitions are based on the number of passenger seats of an air carrier aircraft, and should not be confused with existing definitions for ''large aircraft'' and ''small aircraft'' found in 14 CFR part 1 that classify aircraft by weight.

The term ''air carrier'' would no longer be defined in part 139. Instead, the definition of ''air carrier,'' as set out in 14 CFR part 1 would apply in part 139. The term ''average daily departures'' would be revised slightly by changing the phrase ''consecutive months'' to read ''consecutive calendar months.'' Other references throughout the rule to duration of time using months would be similarly updated to ensure clarity and consistency.

The term ''airport operating certificate'' would be modified to make reference to four new classes of certificated airports. The term ''certificate holder'' likewise would be modified to correspond with new airport classifications. References to subpart D and LAOC would be deleted. Instead, the term ''certificate holder'' would be used generically to describe any airport operator issued an AOC under part 139.

As described earlier, the FAA proposes to modify part 139 to change the process by which airports are categorized, and establish four new types of airport classes. These four classifications—Class I, II, III, and IV airports—would be added to existing definitions.

A Class I airport would serve the most varied types of air carrier operations. A Class I operator would be authorized to serve air carrier operations of large and small air carrier aircraft. Under this proposal, airports already certificated under part 139 to serve scheduled operations of large air carrier aircraft would be reclassified as Class I airports. The FAA anticipates approximately 430 airports would be certificated as Class I airports.

A Class II airport would serve scheduled operations of small air carrier aircraft and unscheduled passenger operations of larger air carrier aircraft. A Class II airport would not serve scheduled large air carrier aircraft. Airports classified as Class II would be those existing airports with a LAOC (airports serving unscheduled large air carrier aircraft) that serve scheduled operations by small air carrier aircraft. The FAA anticipates approximately 120 airports would be certificated as a Class II airport.

A Class III airport would serve scheduled operations of small air carrier aircraft. A Class III airport would not serve scheduled or unscheduled large air carrier aircraft.

Under the current regulation, airports meeting this criteria are not certificated. The FAA anticipates approximately 40 airports would be newly-certificated as Class III airports.

A Class IV airport would serve unscheduled passenger operations of large air carrier aircraft but would not serve scheduled large or small air carrier aircraft. Airports currently holding a LAOC, but not serving scheduled small air carrier operations, would be certificated as Class IV airports. The FAA anticipates approximately 15 airports would be certificated as Class IV airports.

The following table illustrates the types of air carrier operations each proposed category of airport can serve:

| Type of air carrier operation | Proposed airport class | | | |
|---|---|---|---|---|
| | Class I | Class II | Class III | Class IV |
| Scheduled Large Air Carrier Aircraft | X | | | |
| Unscheduled Large Air Carrier Airrcraft | X | X | | X |
| Scheduled Small Air Carrier Aircraft | X | X | X | |

To reflect the proposed deletion of heliports from part 139, the term ''movement area'' would be modified to remove any reference to areas used by helicopters to hover or taxi.

The term ''clean agent'' would be added to specify a new type of aircraft fire extinguishing agent that an airport operator could use to comply with part 139 ARFF requirements. Clean agent is a term used by the firefighting community to describe a category of fire extinguishing agents that replace halon 1211 (see discussion of § 139.317, Aircraft rescue and firefighting: Equipment and agents). The proposed definition is based on National Fire Protection Association (NFPA) 2001, Standards on Clean Agent Fire Extinguishing Systems (1996 Edition), that establishes standards for halon 1211 substitutes. The NFPA is an independent, nonprofit organization that advocates consensus codes and standards, research, and education for fire and related safety issues. Many NFPA codes and standards are used as the basis for legislation and regulations in federal, state, and local governments.

In addition to NFPA 2001, the FAA is proposing that a clean agent used to comply with part 139 requirements would need to have the equivalent extinguishing action as halon 1211, as defined in FAA Technical Report DOT/FAA/AR–95/87. This document establishes a test protocol to measure an extinguishing agent's equivalency to halon 1211 and its appropriateness for use on aircraft fires.

In addition, the terms ''scheduled operation'' and ''unscheduled operation'' would be added to distinguish the types of operations served by the four classes of airports. The definition of ''scheduled operation'' is also found in 14 CFR part 119, Certification: Air carriers and commercial operators. A scheduled operation is conducted by an air carrier or a commercial operator in accordance with a published schedule for passenger operations that includes dates or times, and the operation is openly advertised or made available to the general public. Conversely, the definition of an ''unscheduled operation'' would be an operation conducted by an air carrier or a commercial operator that is specifically negotiated with the customer or that meets the definition of a supplemental operation found in part 119, Certification: Air carriers and commercial operators, or the definition of a public charter found in part 380, Public charters.

All other existing definitions would remain unchanged.

Section 139.7 Methods and Procedures for Compliance

In this proposal, existing § 139.5, titled ''Standards and procedures for compliance with the certification and operations requirements of this part,'' would be moved to proposed § 139.7. Existing § 139.5 specifies that an operator of a certificated airport must comply with the requirements of part 139 in a manner acceptable to the Administrator, and that methods and procedures contained in advisory circulars (AC's) are an acceptable means of compliance.

The relocated section would be titled, ''Methods and procedures for compliance,'' and would be clarified as described below. The FAA proposes to delete the language ''with the certification and operations requirements of this part'' from the title of existing § 139.5. This editorial change would ensure consistent section titles throughout the part. In addition, the term ''standards'' would be replaced with the term ''methods'' so as not to confuse the means of compliance (the methods) with the requirements of the regulations (the standards) prescribed in proposed subparts C and D.

With the addition of new airports to the part 139 process, the FAA believes existing language of this section should be clarified to eliminate any confusion. Several sentences would be combined and revised to state clearly that the use of methods and procedures provided in FAA AC's to comply with part 139 requirements are acceptable.

Advisory Circulars are developed in conjunction with the aviation industry to ensure consistent and reasonable means of complying with regulations. As technology and the aviation industry evolve the advisory circular process provides an expeditious means to revise guidance materials.

Certificate holders may comply with part 139 requirements by means other than those specified in the AC's. However, any alternative must be authorized by the FAA, and must provide the equivalent level of safety in meeting the requirements of part 139. This provision is repeated throughout this proposal in sections where advisory circulars are available to assist the certificate holder in meeting specific regulatory requirements proposed in the document.

*Subpart B—Certification*

Section 139.101 General Requirements

This NPRM proposes to retitle § 139.101, ''Certification requirements: general,'' as ''General requirements,'' and combines the text of existing paragraphs (a) and (b) into a new paragraph (a). New paragraphs (b) and (c) would be added. Existing § 139.101 specifies that no person may operate an airport in the U.S. and U.S. territories that serve certain types of air carrier operations without a part 139 certificate, or in violation of that certificate.

While proposed paragraph (a) combines existing § 139.101(a) and (b) into one paragraph, the requirement that an airport subject to this part may not be operated without an operating certificate, or in violation of its certificate, remains unchanged. References to LAOC's and ACS's would be replaced with proposed changes to the certification process. As mentioned earlier, references to land airports located in the United States or its territories would be moved to a more appropriate location in proposed § 139.1, Applicability.

The term ''except as otherwise authorized by the Administrator'' in existing paragraph (b) would be moved to new paragraph (a). This change would enable the FAA to authorize operations not covered by the regulation.

New paragraph (b) would require each airport operator to adopt, and comply with, an ACM in accordance with proposed requirements.

New paragraph (c) proposes that each airport class implement its ACM within a specified time. It is anticipated that under this proposal most airport operators will only need to document processes and procedures already in place. However, airport operators that would be required to develop an ACM for the first time, or to make extensive revisions to an existing manual, would have more time to comply than other airports. Staggering compliance dates also would permit adequate time for the FAA to process new and revised certification manuals.

Compliance with requirements for runway and taxiway signs, ARFF, and emergency plans would take additional time and corresponding sections of the ACM may not be completed within the timeframes specified in new paragraph (c). Certificated airport operators may need to seek Federal and local funding, order equipment, and train personnel. Consequently, additional time is proposed to implement these requirements (see discussions under proposed § 139.311, Marking, signs, and lighting; § 139.321, Aircraft rescue and firefighting: Exemptions; and § 139.327, Airport emergency plan).

The FAA is requesting comments on the proposed implementation schedules. If the commenter proposes alternative compliance dates, comments

should include supporting operational and economic data.

Section 139.103 Application for Certificate

Existing § 139.103 establishes requirements to apply for an airport operating certificate or an limited airport operating certificate. This proposal would amend existing § 139.103 by revising paragraphs (a) and (b) and by adding a new sentence to the beginning of this section. Proposed changes are intended to incorporate application requirements also found in existing §§ 139.201(a) and 139.209(a).

This section would continue to require an applicant for an AOC to prepare, and submit an application form and an airport certification manual to the Administrator for approval. References to LAOC and ACS also would be deleted in order to correspond to proposed changes to the certification process and classification of airports.

If this proposal is adopted, airport operators currently holding a certificate under part 139 would not be required to apply for a new AOC, but may need to amend an existing ACM or ACS.

Section 139.105 Inspection Authority

The FAA proposes to incorporate existing inspection authority provision of §§ 139.105 and 139.301 into one paragraph. Language referencing statutory authority also would be updated.

Existing § 139.105 states that an airport operator holding a certificate under part 139 must allow the FAA to make inspections to determine compliance with the regulation. This would not change. This new section would state that the Administrator may make inspections and tests to determine compliance with airport certification regulations.

References to the Federal Aviation Act of 1958 would also be removed and replaced with references to the current statutory authority. In addition, references to LAOC have been deleted.

Section 139.107 Issuance of Certificate

Existing § 139.107 specifies standards that must be meet before the FAA can issue a certificate. This NPRM would revise existing language into new paragraphs (a), (b), and (c), propose new requirements an applicant must meet, and deletes references to LAOC.

New paragraph (a) would require applicants to provide written documentation that air carrier service would begin on a specific date. The FAA intends to limit applicants for part 139 certification to those facilities with planned air service.

As presently required under § 139.107, new paragraph (b) would require an applicant for an AOC to meet the requirements for an ACM (as required under proposed § 139.103 and 139.203) prior to issuance of a certificate.

New paragraph (c) combines the remaining requirements of existing § 139.107. Also, the standard ''public interest'' would be replaced with the new standard ''safety in air transportation'' as required by the authorizing statute.

Section 139.109 Duration of Certificate

Existing § 139.109 states that a certificate issued under part 139 is effective until surrendered by the certificate holder, or suspended or revoked by the Administrator. This NPRM proposes to modify this section by placing existing language into new paragraph (a). A new paragraph (b) also is proposed and references to LAOC would be deleted.

New paragraph (b) stipulates that the Administrator may revoke an AOC if air carrier operations have not occurred for 24 consecutive months. However, in deciding whether to revoke an AOC because of lack of service, the FAA would consider the airport's reasonable expectation of future air carrier service.

In previous proposals to part 139, airport operators have recommended that the reduction or revocation of an airport operating certificate should be at the option of the airport operator and not the FAA. These commenters were concerned that if an airport later needed to regain its certification, the cost to do so would prove burdensome. The FAA does not agree with this cost assessment. The FAA requests comments (to include economic and operational data) as to why it would be more costly to surrender a certificate and then later to regain it, than it is to maintain a certificate uninterrupted.

An airport operator that has lost its certification can continue to comply with the requirements of its certification manual and the requirements of part 139 until it regains its certificate. While the FAA does not inspect non-certificated airports, the operators of such airports are encouraged to use part 139 as a guide to ensure safety. Further, many such airport operators would be required by Federal grant assurances to continue to implement elements of their certification program even when not certificated under part 139.

Under various statutes, the Federal Government is authorized to grant property, funds, and other assistance to local communities for the development of airport facilities. In return, airport owners assume certain obligations, either by contract or by restrictive covenants in property deeds that require the airport operator to maintain and operate its airport facilities safely, efficiently, and in accordance with specified conditions. These conditions are known as ''grant assurances'' and require the airport owner to comply with certain maintenance and operational conditions similar to those found in the requirements of part 139. For example, grant assurances require the airport operator to maintain pavements constructed or repaired with Federal assistance. These airport operators must also make arrangements for promptly marking, lighting and reporting hazards and other conditions affecting aeronautical use of the airport.

This revised section also proposes language enabling a certificate holder to appeal an order revoking its AOC. The appeal process is found in 14 CFR part 13.

Section 139.111 Exemptions

Existing § 139.111 establishes procedures for the certificate holder to petition for an exemption from the requirements of part 139. The FAA proposes to modify this section to reflect proposed changes to the format used for petitions for exemption from aircraft rescue and firefighting requirements.

Under revised paragraph (b), references to 14 CFR 11.25, Petitions for Rulemaking or Exemption, would be deleted. Instead, a new sentence would be added to the end of the paragraph that specifies that an applicant for, or holder of, an AOC desiring to petition from aircraft rescue and firefighting requirements must do so as prescribed under new § 139.321 (see discussion under proposed § 139.321, Aircraft rescue and firefighting: Exemptions).

Section 139.113 Deviations

This notice proposes to revise existing § 139.113 language to permit the certificate holder more flexibility during emergencies requiring deviation from some of part 139 requirements. Existing § 139.113 permits the certificate holder to deviate from requirements of subpart D of the regulation during emergency conditions.

As proposed, the standard ''involving the transportation of persons by air carriers,'' would be deleted from the first sentence. This standard was originally included in part 139 to ensure that airport resources and services would not be routinely used to respond to emergencies in the local community. However, this section has been subsequently interpreted as prohibiting

the certificate holder from deviating from part 139 requirements unless the emergency involves air carrier operations.

It was never the FAA's intent to restrict airport emergency services from assisting with occasional catastrophic events because an air carrier was not involved. No amount of pre-planning can cover every emergency scenario, and the FAA believes emergency service providers are best suited during an emergency to determine the appropriate response.

When a deviation occurs, it would be considered permissible under proposed § 139.113, so long as the certificate holder notifies the FAA within 14 days of the deviation. This change, however, is not meant to allow a certificate holder to take advantage of emergency situations to regularly deviate from the requirements of part 139. For instance, this proposed section is not intended to allow local municipalities to use the emergency services of a part 139 airport to routinely respond to emergencies in the surrounding community during air carrier operations. This section is intended only to allow a certificate holder to provide temporary assistance during occasional catastrophic or natural emergencies.

Certificate holders that are recipients of Federal funds also should note that this proposed section would not excuse them from any limitations or provision of their grant assurances that restrict the use of facilities and equipment purchased with Federal funds.

In addition, the term ''airport certification manual'' would be added to the first sentence of this paragraph to clarify that the certificate holder may, when responding to an emergency, deviate from both its certification manual and any requirements of subpart D.

The FAA further proposes to modify requirements of this section to allow the certificate holder to notify the FAA of deviations by telephone, or other means of electronic communications, rather than requiring an automatic written notification.

*Subpart C—Airport Certification Manual*

The FAA proposes to revise the title of this subpart by removing references to airport certification specifications. In general, the contents of subpart C would be clarified and requirements for airports serving scheduled operations of small air carrier aircraft have been included.

Section 139.201 General requirements

Existing § 139.201 requires applicants for an AOC to develop, and submit for approval, a certification manual.

This section also requires certificate holders to comply with their approved ACM.

This NPRM proposes to retitle this section from ''Airport operating certificate: Airport certification manual,'' to ''General requirements.'' In addition, the section would be revised to consolidate requirements of existing §§ 139.201, 139.203, 139.207, 139.209, 139.211, and 139.215 into a single section.

The FAA proposes the same general requirements for preparation and maintenance of ACM's for all certificated airports. Existing part 139 provides separate sections for the preparation and maintenance of an ACM and ACS, although the requirements of these sections are essentially the same.

New paragraphs (b) and (c) would set forth manual preparation, maintenance, and distribution requirements. The proposed changes clarify signature responsibilities of the certificate holder, and the necessity to document manual changes. In addition, these changes would require that any revision to the certification manual contain the FAA's approval, in addition to an approval date.

Also, the requirement that a certification manual be typewritten would be expanded to include any printed form. This change is intended to clarify that any type of printed form, whether produced on a typewriter, computer, etc., would be acceptable to the Administrator.

Existing §§ 139.201(a) and 139.209(a) would be deleted as the language in both these paragraphs duplicates the language of proposed § 139.103 (see the discussion of proposed § 139.103, Application for certificate). Also, the 1988 dates in existing §§ 139.201(c) and 139.209(c) would be deleted as these dates are no longer applicable.

Existing paragraph (b) provides guidance and an acceptable means of compliance with ACM requirements would be revised and moved to new paragraph (d). References to the specific series numbers within the AC system would be deleted. Instead, this new paragraph would make a general reference to the AC system. This will allow more flexibility in updating the AC numbering system, without requiring a subsequent revision to the regulation. References to specific AC series numbers would be similarly updated throughout subpart D.

Section 139.203 Contents of Airport Certification Manual

Under this proposal, existing § 139.203, titled ''Preparation of airport certification manual,'' would be moved to proposed § 139.201. Existing § 139.203 establishes standards for maintaining an ACM.

The contents of §§ 139.205 and 139.213 are combined in proposed new § 139.203. Additional requirements are proposed to correspond to the new classifications of certificated airports and changes to subpart D.

Similar to existing §§ 139.205(a) and 139.213(a), new paragraph (a) would require all classes of airports to include in their certification manual a description of procedures and equipment used to comply with subpart D and any other requirements of this section. However, existing language of §§ 139.205(a) and 139.213(a) would be revised. Existing §§ 139.205(a)(2) and 139.213(a)(2), specifying compliance with limitations imposed by the Administrator, would be moved to proposed new paragraph (b).

All certificate holders would be required to have an ACM, and new paragraph (b) would specify the manual contents for each class of airport. As noted above, the content of the manual would vary depending on the class of airport. The most comprehensive manual would be required for Class I airports because they serve more complex and varied air carrier operations.

A chart is proposed in new paragraph (b) to aid the certificate holder in determining the content of its manual. This chart lists the four proposed airport classifications and links each class to the appropriate certification manual element.

In revised § 139.203(b), proposed Class I airport certificate holders would be required to include in their ACM all elements that are currently required. In addition, this proposal would require the operators of these airports to incorporate into their ACM several new elements.

Class I airport certificate holders would include in their ACM a description of personnel training and equipment, and a system for maintaining records. This is intended to correspond to proposed new § 139.301 and proposed changes to existing § 139.303 (see the discussion under proposed section 139.301, Records; and 139.303, Personnel).

Airport operators currently holding a LAOC would be required to convert their existing ACS into an ACM. All elements that are presently required to

be in an airport certificate holder's ACS would be transferred into the new ACM.

Manuals for airports certificated as Class II and IV airports would include procedures to ensure safety in storing and handling hazardous materials, traffic and wind indicators, and self-inspections, as specified in subpart D.

These airport operators currently address these safety issues differently . Under existing part 139, these safety issues must be addressed in the ACS, but not necessarily in the manner prescribed under subpart D.

The FAA has found that most certificate holders with an LAOC already provide for these elements in their ACS, as required under existing subpart D. Part 139 requirements related to the handling of hazardous materials, wind and traffic indicators, and self-inspections represent good general airport operating practices that many of these airports already have adopted.

In addition, operators of airports certificated as Class II and IV airports would be required to include in their ACM a grid map or other means of identifying locations and terrain on and around the airport that are significant to emergency operations. For many years, airports serving scheduled large air carrier operations have been required to include this grid map in their certification manual. This map assists airport personnel in maintaining the airport, and emergency personnel in responding to incidents at the airport. As such, the FAA proposes that all certificate holders include a grid map in their ACM.

Operators of proposed Class II and IV airports also would be required to include in their ACM an emergency plan and procedures for, and descriptions of, recordkeeping and personnel training. This is intended to correspond to other proposed changes in the regulation. Unlike proposed Class I certificate holders, Class II and IV certificate holders would not have to include in their certification manuals provisions to conduct triennial full scale emergency disaster drills. For more details on these proposed requirements, see the discussion under proposed § 139.301, Records; § 139.303, Personnel; and § 139.327, Airport emergency plan.

A significant change for operators of proposed Class II and IV airports would be the requirement to include in the ACM a description of the procedures and equipment used for complying with the ARFF standards of proposed §§ 139.317 and 139.319. While these airports provide for ARFF coverage, the level of coverage may not meet standards prescribed under existing §§ 139.317 and 139.319. The FAA proposes to require operators of Class II and IV airports to include ARFF procedures in their ACM, as specified in subpart D, and comply with at least Index A ARFF requirements. Airport operators could petition for an exemption from some or all ARFF requirements under proposed § 139.321, Aircraft rescue and firefighting: Exemptions, provided conditions prescribed in proposed § 139.321 are met.

Unlike Class IV airports, Class II airports would serve both unscheduled operations of large air carrier aircraft and scheduled small air carrier aircraft. As such, the FAA proposes additional safety requirements appropriate for Class II airports. These airports would most likely serve more total air carrier operations than proposed Class IV airports and would be required to comply with additional requirements. These additional requirements would be addressed in the ACM as follows:

1. Procedures for avoidance of interruption, or failure during construction work, of utilities serving facilities or navaids that support air carrier operations;

2. A snow and ice control plan as required under proposed § 139.313;

3. Procedures for controlling ground vehicles as required under proposed § 139.331;

4. Procedures for obstruction removal, marking, or lighting as required under proposed § 139.333;

5. Procedures for protection of navaids as required under proposed § 139.335;

6. A wildlife hazard management plan as required under proposed § 139.339; and

7. Procedures for identifying, marking, and reporting construction and other unserviceable areas as required under proposed § 139.343.

Class III airports would be newly certificated under this proposal. As such, operators of these airports would be required to develop an ACM. For some operators, this requirement would be minimal because it would only require documenting existing procedures. Other Class III airport operators would be required, for the first time, to develop new procedures. Still others would be required to establish manuals based on a combination of new and existing procedures.

Under new paragraph (b), proposed Class III airport operators would be required to include in their ACM a description of the following procedures and equipment—

1. Lines of succession of airport operational responsibility;

2. Each current exemption issued to the airport from the requirements of this part;

3. Limitations imposed by the Administrator;

4. A grid map or other means of identifying locations and terrain features on and around the airport which are significant to emergency operations;

5. The location of each obstruction required to be lighted or marked within the airport's area of authority;

6. A description of each movement area available for air carriers and its safety areas and each road described in § 139.319(k) of this part that serves it;

7. Procedures for avoidance of interruption, or failure during construction work, of utilities serving facilities or navaids that support air carrier operations;

8. A description of the system for maintaining records as required under § 139.301 of this part;

9. A description of personnel training as required under § 139.303 of this part;

10. Procedures for maintaining the paved areas as required under § 139.305 of this part;

11. Procedures for maintaining the unpaved areas as required under § 139.307 of this part;

12. Procedures for maintaining the safety areas as required under § 139.309 of this part;

13. A sign plan depicting the runway and taxiway identification system and location and inscription of the signs as required under § 139.311 of this part;

14. A description of, and procedures for maintaining, the marking, signs, and lighting systems as required under § 139.311 of this part;

15. A snow and ice control plan as required under § 139.313 of this part;

16. A description of the facilities, equipment, personnel, and procedures for meeting the rescue and firefighting requirements in accordance with §§ 139.317 and 139.319 of this part;

17. A description of any approved exemption from the rescue and firefighting requirements as authorized under § 139.321 of this part;

18. Procedures for handling fuel, lubricants and oxygen required under § 139.323 of this part;

19. A description of, and procedures for maintaining, the traffic and wind direction indicators as required under § 139.325 of this part;

20. An emergency plan as required under § 139.327 of this part;

21. Procedures for conducting the self-inspection program as required under § 139.329 of this part;

22. Procedures for controlling ground vehicles as required under § 139.331 of this part;

23. Procedures for obstruction removal, marking, or lighting as required under § 139.333 of this part;

24. Procedures for protection of navaids as required under § 139.335 of this part;

25. A description of public protection as required under § 139.337 of this part;

26. A wildlife hazard management plan as required under § 139.339 of this part;

27. Procedures for airport condition reporting as required under § 139.341 of this part;

28. Procedures for identifying, marking, and reporting construction and other unserviceable areas as required under § 139.343 of this part; and

29. Other requirements that the Administrator finds is necessary to ensure safety in air transportation.

While operators of proposed Class III airports would be required to include many of the same elements in their certification manual as Class I and II airports, the FAA can provide relief from some of these requirements that are too operational or economically burdensome. The operators of Class III airports may petition for an exemption from some or all ARFF requirements, and relief is proposed from certain sign and emergency drill requirements.

In addition, this section would specify that operators of all proposed classes of airport would be required to develop a sign plan as part of their ACM that shows the location on the airport and inscription of each sign required by § 139.311(b). During a review of airport sign systems [52 FR 44276, November 18, 1987; and 53 FR 40842, October 18, 1988], the FAA found that planning and diagramming appropriate signs and their location avoided unnecessary sign purchases or improper sign locations. Accordingly, the FAA believes the requirement for a sign plan would be beneficial to all certificated airports and that most currently certificated airports comply with this proposed requirement.

The following tables list both current part 139 requirements and proposed subject requirements that would be applicable to each airport classification should the FAA adopt this proposal. Proposed requirements would be in addition to current requirements as revised, unless otherwise noted in the table.

A. CURRENT AND PROPOSED REQUIREMENTS FOR CLASS I AIRPORTS

| Current requirements | Proposed requirements |
|---|---|
| 1. Personnel provisions | A recordkeeping system and new personnel training standards. |
| 2. Paved and unpaved surfaces | Unchanged. |
| 3. Safety areas | Unchanged. |
| 4. Marking, lighting and signs | Unchanged. |
| 5. Snow and ice control plan | Unchanged. |
| 6. ARFF | New recurrency training, fire extinguishing agent and HAZMAT response standards, and increase frequency of ARFF coverage (where ARFF is not provided for small air carrier operations). |
| 7. HAZMAT handling/storage | Standards for air carrier fueling operations, and additional fuel fire safety and personnel training standards. |
| 8. Traffic/wind indicators | New supplemental wind cone/segmented circle standards. |
| 9. Airport emergency plan (AEP) | New requirement to plan for fuel storage fires. |
| 10. Self-inspections | New training requirements for inspection personnel. |
| 11. Ground vehicle operations | Unchanged. |
| 12. Obstructions | Unchanged. |
| 13. Navaids | Unchanged. |
| 14. Public protection | Unchanged. |
| 15. Wildlife hazard management | New wildlife strike reporting, hazard assessment, and management plan standards. |
| 16. Airport condition reporting | New notification standard. |
| 17. Construction/unserviceable areas | Unchanged. |

B. CURRENT AND PROPOSED REQUIREMENTS FOR CLASS II AIRPORTS

| Current requirements | Proposed requirements |
|---|---|
| 1. | New requirements for a recordkeeping system and personnel training. |
| 2. Paved and unpaved surfaces | Unchanged. |
| 3. Safety areas | Unchanged. |
| 4. Marking, lighting and signs | Unchanged. |
| 5. | New requirement for snow and ice control plan. |
| 6. ARFF (negotiated standard) | New ARFF standards per proposed 139.315–.321). |
| 7. HAZMAT handling/storage (negotiated standard). | New HAZMAT handling/storage standard (per proposed 139.323). |
| 8. Traffic/wind indicators (negotiated standard) | New traffic/wind indicators standard (per proposed 139.325) |
| 9. | New requirement for AEP (no triennial exercise required). |
| 10. Self-inspections (negotiated standard) | New self-inspections standard (per proposed 139.329). |
| 11. | New requirement for ground vehicle operations. |
| 12. | New requirement for obstructions. |
| 13. | New requirement for Navaids. |
| 14. | New requirement for public protection. |
| 15. | New requirement for wildlife hazard management. |
| 16. Airport condition reporting (negotiated standard). | New airport condition reporting standard (per proposed 139.341). |
| 17. | New requirement for construction/unserviceable areas. |

C. CURRENT AND PROPOSED REQUIREMENTS FOR CLASS III AIRPORTS

| Current requirements | Proposed requirements: |
|---|---|
| 1. | A recordkeeping system and personnel training. |
| 2. | Paved and unpaved surfaces. |
| 3. | Safety areas. |
| 4. | Marking, lighting and signs. |
| 5. | Snow and ice control plan. |
| 6. | ARFF. |
| 7. | HAZMAT handling/storage. |
| 8. | Traffic/wind indicators. |
| 9. | AEP (no triennial exercise required). |
| 10. | Self-inspections. |
| 11. | Ground vehicle operations. |
| 12. | Obstructions. |
| 13. | Navaids. |
| 14. | Public protection. |
| 15. | Wildlife hazard management. |
| 16. | Airport condition reporting. |
| 17. | Construction/unserviceable areas. |

D. CURRENT AND PROPOSED REQUIREMENTS FOR CLASS IV AIRPORTS

| Current requirements | Proposed requirements |
|---|---|
| 1. | New requirement for a recordkeeping system and personnel training. |
| 2. Paved and unpaved surfaces | Unchanged. |
| 3. Safety areas | Unchanged. |
| 4. Marking, lighting and signs | Unchanged. |
| 5. | |
| 6. ARFF (negotiated standard) | Unchanged. |
| 7. HAZMAT handling/storage (negotiated standard). | Unchanged. |
| 8. Traffic/wind indicators (negotiated standard) | Unchanged. |
| 9. | New requirement for an AEP (triennial exercise not required). |
| 10. Self-inspections (negotiated standard) | Unchanged. |
| 11. | |
| 12. | |
| 13. | |
| 14. | |
| 15. | |
| 16. Airport condition reporting (negotiated standard). | Unchanged. |
| 17. | |

Section 139.205 Amendment of Airport Certification Manual

Under this proposal, existing § 139.205, titled ''Contents of airport certification manual,'' would be moved to proposed § 139.203. Existing § 139.217, titled ''Amendment of Airport Certification Manual or Airport Certification Specifications,'' would be moved to proposed § 139.205 and retitled. Existing § 139.217 specifies procedures for amending the ACM or the ACS.

Minor editorial clarifications are proposed to existing § 139.217, but existing amendment procedures and requirements would be unchanged. The title of the section would be revised to delete the term ''Airport Certification Specifications.'' Also, references to the Administrator have been changed to Associate Administrator for Airports. Action on petitions made under this section would be delegated to the Associate Administrator for Airports.

In addition, amendment procedures specified in existing paragraph (d) would be revised. Currently the FAA may initiate action to amend an ACM, but there is no time period specified when the certificate holder will be notified of the disposition of a proposed amendment. Under new paragraph (d), the certificate holder would be notified within 30 days after receipt of the notification as to whether the amendment has been adopted or rescinded.

*Subpart D—Operations*

Section 139.301 Records

Under this proposal, existing § 139.301, titled ''Inspection authority,'' would be moved to proposed subpart B and consolidated with existing language of § 139.105 to create a single section titled ''Inspection authority'' (see discussion under § 139.105, Inspection authority). Proposed § 139.301, titled ''Records,'' would be new and be applicable to all part 139 airports.

With the addition of new airports to the certification process, the FAA believes it is necessary to clarify certificate holders' recordkeeping responsibilities. While many certificated airports already keep records to show compliance with part 139, this proposed amendment would ensure more consistent recordkeeping and require that the FAA be given access to such records.

New paragraph (a) would stipulate that the certificate holders would make available to FAA inspectors records required under part 139 in a manner to facilitate their monitoring of an airport's compliance with part 139.

Proposed new paragraph (b) would require that a certificate holder make and maintain records of each scheduled

or unscheduled operation of large air carrier aircraft and scheduled operations of small air carrier aircraft, if the airport serves less than 10,000 annual air carrier operations during the previous 24 consecutive calendar months. This information will assist the FAA in determining whether the airport operator should continue to hold an AOC.

The FAA does not currently collect data on air carrier operations from airports with less than 10,000 annual operations, nor is data collected on unscheduled air carrier operations. Without this data, it is difficult for the FAA to properly allocate resources at airports serving small or unscheduled air carrier aircraft. The FAA does not believe this requirement is unduly burdensome as many airport operators already track air carrier operations for planning purposes and collecting user fees.

Proposed paragraph (c) would require the certificate holder to maintain any additional records that the Administrator may require. This paragraph also identifies some new and existing recordkeeping requirements contained in proposed part 139.

Section 139.303 Personnel

Existing § 139.303 requires certificate holders to maintain sufficient qualified personnel necessary to comply with the requirements of part 139. Under this proposal, this section would be revised to include additional requirements, organized into four new paragraphs. The requirements of this revised section would be applicable to all part 139 airports.

With the addition of new airports to the certification process, the FAA proposes to clarify in new paragraphs (a) and (b) a certificate holder's responsibilities to train and equip personnel performing duties required under the proposed part 139. This would include duties performed by airport personnel necessary to ensure the safe and efficient operation and maintenance of the airport. While many existing part 139 airports must comply with existing requirements of § 139.303, this proposal would for the first time stipulate that certificate holders must ensure that their personnel have the available resources needed to properly perform their duties. For example, a certificate holder would be required to provide personnel responsible for the upkeep of runway lighting with any necessary electrical supplies and tools, as well as provide access to pertinent sections of the ACM, and appropriate AC's.

New paragraph (c) proposes that the certificate holder develop a personnel training program to ensure that all personnel have the specific knowledge to perform their required duties at their airport and can perform such duties. Similar to training required for ARFF personnel, this training would be required when personnel first assume their duties and again on a reoccurring basis, as specified in the ACM.

New paragraph (d) would require the certificate holder to maintain records of training given to personnel, as required under this new section. Training records for each individual would have to be kept for each employee a minimum of two years after completion of the training to ensure these records are available for the FAA's annual inspection. The FAA has found that annual ARFF training records currently required have benefited the FAA and certificate holders in monitoring the quality and effectiveness of training. The FAA believes it would be beneficial to require training records of other employees that have duties prescribed in the ACM.

Section 139.305 Paved Areas, and
Section 139.307 Unpaved Areas

Under this proposal, existing §§ 139.305 and 139.307 would remain virtually unchanged. These sections prescribe standards for maintaining and repairing paved and unpaved areas.

The term ''Airport Certification Specifications'' would be deleted to reflect proposed certification changes, and language stating specific series numbers within the AC system would be changed to a general reference to the AC system.

Further, existing § 139.305(a)(1) would be modified by deleting the terms ''full strength'' and ''shoulder.'' The terms ''full strength'' and ''shoulder'' have caused confusion as to what areas surrounding movement areas to apply the 3-inch abutting surface limitation. To minimize damage to an aircraft that inadvertently leaves a runway, taxiway or other movement areas, this standard ensures that the edges of such pavement do not exceed more than 3 inches in height than the surrounding areas. This change clarifies that the standard is applicable to any area surrounding pavement used by air carrier aircraft, regardless of how these areas are used, or these areas' condition, strength, or composition.

Currently, all airports certificated under part 139 must comply with the provisions of §§ 139.305 and 139.307. In addition, proposed manual requirements (proposed § 139.205) would require operators of newly certificated airports to develop procedures for maintaining paved and unpaved areas, as required under these sections. Both the FAA and the ARAC Commuter Airport Certification Working Group agree that airports serving scheduled operations of small air carrier aircraft should be required to maintain paved and unpaved areas as prescribed by these sections. Paved and unpaved areas include loading aprons, parking areas, taxiways, and runways. The deterioration of pavements and other areas must be limited to ensure that these areas adequately support air carrier aircraft operations.

The requirements for paved and unpaved areas should not prove a hardship on proposed Class III airports. As mentioned earlier, many of these airports have received Federal funding for paving improvements or new construction (see discussion of Regulatory Evaluation). These airports already maintain paved areas in a manner authorized by the Administrator in order to comply with grant assurances (see discussion of proposed § 139.109, Duration of certification). Pavement rehabilitation and expansion projects are eligible for further Federal funding and may be eligible for additional state or local funding.

Section 139.309 Safety Areas

Existing § 139.309 prescribes standards for the establishment and maintenance of a safety area for each runway and taxiway available for air carrier use. Under this proposal, this section would remain the same, except for minor editorial changes to paragraphs (a) and (c). The requirements of this revised section would be applicable to all part 139 airports, including proposed Class III airports.

A safety area is a defined area surrounding a runway or taxiway that is prepared, or suitable, for reducing the risk of damage to aircraft in the event an aircraft undershoots, overshoots, or deviates from a taxiway or runway. Establishing a safety area may require filling of culverts, grading, and compacting the ground to remove depressions or high spots. Lights and signs may be reinstalled on frangible mountings. A well-maintained safety area can prevent injuries to passengers and limit damage to aircraft that depart from paved surfaces. The safety area would allow the aircraft to come to a rest on a graded, obstacle free surface. Safety areas also allow emergency response vehicles to more quickly reach troubled aircraft.

The language of existing paragraph (a) would be revised to require that certificate holders ensure runway safety

areas are maintained in accordance with the standards of this section, unless otherwise approved in the ACM.

Dates listed in existing paragraphs (a)(1) and (2) that ''grandfather'' existing safety areas would remain effective. These dates were adopted when part 139 was revised in 1987 (52 FR 44276, November 18, 1987.) Prior to 1987, many airport operators invested resources to develop safety areas before standardized guidelines were established. Further, physical limitations of airports resulted in establishment of some safety areas that did not meet the standard due to local circumstances. For example, available solid ground around runways located adjacent to bodies of water may have been inadequate to establish a safety area that meets the required dimensions.

Since 1988, the FAA has required any renovation or construction of safety areas to meet the requirements of § 139.309 at most airports that would be effected by this proposed rule, including proposed Class III airports. Any newly certificated airport under this proposal that has renovated or constructed its safety areas since 1988 could apply for an exemption under proposed § 139.111 if its safety areas do not comply with the requirements of this section.

Paragraph (c) would be revised to make a general reference to the availability of the AC system.

Section 139.311 Marking, Signs, and Lighting

Existing § 139.311, titled ''Marking and lighting,'' specifies standards for runway and taxiway markings, signs, and lighting. Under this proposal, this section would be retitled and clarified. In addition, new paragraphs (b) and (g) would be added. The marking and lighting requirements would be revised to correspond to proposed § 139.203 requiring all operators of certificated airports to comply with this section.

The addition of the word ''signs'' to the title of this proposed section reflects proposed changes to this section that would separate marking, signs, and lighting requirements into three distinct paragraphs. Paragraph (a) would contain marking requirements, new paragraph (b) would specify sign requirements, and paragraph (c) would detail movement area lighting requirements.

Revised paragraph (a) would contain existing marking requirements, with a minor clarification concerning taxiway edge markings. In addition, the word ''runway'' would be deleted from the term ''runway holding position markings'' to permit special operations that require holding position markings other than those prior to the runway. To accommodate such special aircraft operations, the FAA proposes to delete the word ''runway'' from both the phrase ''runway holding position markings'' in proposed paragraph (a) and the phrase ''runway holding position signs'' in proposed paragraph (b).

New paragraph (b) would include sign requirements currently found in § 139.311(a) and specify signs that must be internally illuminated. Paragraph (b)(2) would require proposed Class I, II, and IV airports operators to internally illuminate taxiing route signs, holding position signs, and ILS critical area signs. Paragraph (b)(3) would require operators of proposed Class III airports to internally-illuminate only holding position and ILS critical area signs.

Due to cost associated with installing and maintaining internally-illuminated signs, the majority of the ARAC Commuter Airport Certification Working Group recommended use of retro-reflective runway signs (signs that reflect light back, similar to signs used on interstate highways) for runways not equipped with lighting. Internally-illuminated signs would be appropriate for runways that are equipped with lighting. The working group report recognized the cost to install internally-illuminated signs and suggested use of these signs only on runways that have a power source in place. The initial cost to supply electrical power to taxiways and/or runways was viewed as relatively high, and the working group hoped this approach would economize airport resources.

While the majority of the working group recommended retro-reflective signs identifying taxiing routes, representatives of ALPA recommended that newly certificated airports (proposed Class III airports) install internally-illuminated signs on taxiing routes where edge or centerline lighting exists. ALPA opposes retro-reflective taxiway signs because it believes that retro-reflective signs may not be visible to pilots operating aircraft of varying size and configurations. Conversely, the majority of members believe that aircraft with fewer than 31 passenger seats (typically used at Class III airports) are lower to the ground, thereby validating use of retro-reflective signs. ALPA further argued that similar requirements for runway and taxiway signs would ensure standardization and, with the gradual conversion to internally illuminated signs, would present a minimal economic burden, noting that signs are eligible for Federal funding.

The FAA disagrees with ALPA's conclusion that use of internally-illuminated signs will present minimal impact on airports. While improvements to taxiway and runway signs are eligible for Federal funding, such improvements may not receive funds. Further, requiring installation of specific equipment on the assumption that the equipment is eligible for funds through the AIP would be misleading. AIP funds are allocated on a priority basis, and airport sign improvements would compete with other airport improvements and safety projects on a nationwide basis. Moreover, AIP funds do not cover all of an airport's costs local communities provide some matching funds.

However, the FAA is concerned about ALPA's contention that retro reflective signs may not be visible to all air carrier pilots because of differences in aircraft configurations and the location of taxi lights, and would like to use this rulemaking to invite comments on this issue. FAA also requests comments, including economic and operational data, on whether or not the installation of unlighted retro-reflective signs would provide an adequate sign system for Class III airports.

The term ''unless otherwise authorized by the Administrator'' also would be included in new paragraph (b) to provide for those instances where an airport has a runway that does not have edge or in-pavement lighting, thus a suitable power source may not be available to illuminate signs. In such cases, the FAA would work with the airport to develop acceptable alternative signs until funding is available for installing or improving power for runway lights and signs.

New paragraph (c) would contain existing lighting requirements for aircraft operations currently found in existing § 139.311(b). The word ''darkness'' would be replaced with the word ''night,'' which is defined in 14 CFR part 1. Special criteria also would be included to address the unique environment of Alaska.

Also, references to 14 CFR part 77 concerning obstruction would be deleted. Part 77 is being revised and may be reorganized. New paragraph (c)(5) of proposed § 139.311 would require the marking and lighting of objects determined by the FAA to be an obstruction.

The phrase ''authorized by the Administrator'' also would be added to existing language of proposed paragraphs (a), (b), and (c). This change would ensure that the requirements of this section are implemented in a manner satisfactory to the FAA. This change corresponds to those in proposed § 139.7 (see discussion under

§ 139.7 Methods and procedures for compliance).

In addition, language in paragraphs (a), (b), and (c) pertaining to lowest minimums authorized for a runway would be modified. This revised language would clarify that the FAA authorizes landing and takeoff minimums for runways. This does not change how such minimums are currently determined; the revised language clarifies that FAA is responsible for making such determinations.

With changes to other paragraphs in this section, existing paragraph (c) would become new paragraph (d) and continue to require certificate holders to properly maintain marking, sign and lighting systems. Existing (d), requiring certificate holders to prevent light interference with air traffic control and aircraft operations, would become new paragraph (e). Consequently, existing paragraph (e) would become new paragraph (f) and continue to specify that advisory circulars (AC's) contain marking, sign, and lighting standards that are acceptable to the Administrator. Existing paragraph (f) would be deleted as it addresses an implementation date that has already passed.

A new paragraph (g) proposes a compliance date for marking and lighting requirements by operators of proposed Class III airports. These airport operators would be provided adequate time to develop a sign plan, order, and take delivery of signs, and install signs required by this part. Operators of proposed Class II and IV airports currently holding an LAOC should already comply with this section's requirements.

Section 139.313 Snow and Ice Control

This proposal would make minor modifications to the existing standards of § 139.313, titled Snow and ice control. As proposed, Class I airport certificate holders would continue to implement their existing snow plans, and operators of proposed Class II and III airports would be required to develop snow and ice control plans, as appropriate.

Existing § 139.313 requires operators of airports serving scheduled operations of large air carrier aircraft to develop and implement snow and ice control plans, if the airport is located in an area where snow and icing conditions regularly occur. Snow and ice plans include procedures for removal and control of snow and ice accumulations and notification to air carriers when movement areas are unusable due to snow and ice. No changes are proposed to these requirements.

In the revised paragraph (a), the term ''regularly'' would be deleted and new language added to clarify that the FAA will determine which airports require snow and ice control plans. The term ''regularly'' is too vague and difficult to further define.

Proposed § 139.313(b)(2) would be modified. This paragraph prescribes the standard for positioning snow off movement areas. This proposal would not change this standard, but would delete the redundant term ''full strength.'' This term ''full strength'' is unnecessary as proposed § 139.3 defines movement areas as those areas used by aircraft to taxi and land. To function as such, movement areas must have the capability to support the weight of the aircraft using these surfaces—a surface condition described as full strength.

In addition, references to airport condition reporting requirements in paragraph (b) would be updated to correspond to new section numbering. Paragraph (c) also would be modified to reference generically to the AC system rather than specific series number.

The ARAC Commuter Airport Certification Working Group's report contained a recommendation that Class II and III airports should be required to remove snow and ice. The working group suggested minor modifications to the rule language that would limit the requirement to remove snow and ice to times just prior to air carrier operations. The group recommended deletion of the requirement that snow and ice be removed promptly. The FAA disagrees. Continuous and prompt removal of snow and ice ensures safe airport conditions in hazardous weather conditions. Failure to promptly remove snow and ice from movement areas could make removal of accumulations just prior to air carrier operation more difficult.

Sections 139.315–139.321 Aircraft Rescue and Firefighting (General Discussion)

Existing part 139 has three sections dedicated to aircraft rescue and firefighting (ARFF) requirements. This proposal would revise these three sections to include new requirements and reflect current industry practices. In addition, a fourth ARFF section is proposed that would specify procedures for airport certificate holders to request an exemption from ARFF requirements.

This proposal also would require that *all* airports certificated under part 139 provide appropriate ARFF coverage meeting at least minimum ARFF requirements (Index A), subject to the limited exemption discussed below. Proposed changes to ACM requirements (see discussion of proposed § 139.203, Contents of airport certification manual) would require all certificated airports to include procedures in their ACM for complying with proposed ARFF requirements appropriate to the air carrier aircraft and operation served.

Currently, only airports serving scheduled operations of large air carrier aircraft are required to comply with all of part 139 ARFF requirements. Under existing § 139.321(b)(11), airports serving unscheduled operations of large air carrier aircraft (airports holding an LAOC) are required only to provide for ''emergency response to aircraft rescue and firefighting needs.'' This means that airports holding an LAOC must provide for ARFF coverage but such coverage does not have to meet prescribed part 139 ARFF requirements. The FAA determines ARFF requirements at these airports on a case-by-case basis. While the FAA uses part 139 standards as a benchmark, the level of this coverage varies depending on the air carrier operations served and the availability of local resources.

To standardize ARFF at certificated airports, the FAA proposes that all certificated airports serving both scheduled and unscheduled operations be required to comply with all ARFF requirements. However, requiring all airports to comply with the standards of this revised section may pose a substantial cost for airports that do not currently provide at minimum ARFF coverage (Index A), or do so only to cover an occasional unscheduled air carrier flight. This would include both currently certificated airports and airports that would be newly certificated if this proposal is adopted.

The FAA has provided financial and technical support to help some airports holding an LAOC comply with part 139 ARFF requirements, particularly for the purchase of ARFF equipment. As a result, many airports holding a LAOC already comply with most of the ARFF requirements. However, the FAA recognizes that these airports typically are located in smaller communities that have limited resources and that the sporadic nature of unscheduled air carrier operations often makes it cost prohibitive for such communities to provide the same level of ARFF coverage provided by airports serving scheduled large air carrier aircraft.

Accordingly, the FAA proposes to establish procedures to exercise its statutory authority to provide limited exemptions for certain airports from some or all prescribed ARFF requirements on a case-by-case basis.

The issue of ARFF proved to be the most contentious for the ARAC

Commuter Airport Certification Working Group. The group was not able to reach a consensus on the level of ARFF coverage appropriate for airports serving small air carrier aircraft. While the majority of the working group agreed that ARFF equipment should meet minimum ARFF coverage required under part 139 (Index A), no agreement was reached for stationing ARFF personnel and equipment on the airport, or requiring a 3-minute ARFF response.

The working group's greatest concern was over labor and training costs associated with ARFF requirements. The working group concluded that many of the communities serving small air carrier operations could not afford to provide the same level of ARFF services required of airports serving large air carrier operations, even if Federal funds were made available to assist in the purchase of ARFF equipment. The majority of the members of the working group recommended that operators of small airports work with local firefighting agencies to arrange for emergency services and incorporate such arrangements into the airport's emergency plan.

The majority of the working group also concluded that there was a lack of accident data to support on-airport ARFF at smaller facilities. The working group reviewed the National Aviation Safety Data Analysis Center's (NASDAQ) collection of NTSB reports for all part 135 scheduled airplane accidents and incidents that occurred on airports between 1983 and 1996. The group discovered 15 on-airport accidents involving small air carriers that resulted in post crash fires. A total of 38 fatalities occurred as a result of these accidents. With the exception of one accident resulting in fatalities, all fatalities were the result of the aircraft impact, not the subsequent fire.

The exception is the crash of Northwest Airlink Flight 2268, a CASA–212 commuter aircraft, at the Detroit Metropolitan Airport on March 4, 1987. The Detroit Metropolitan Airport is a part 139 certificated airport with the most comprehensive ARFF capabilities (Index E). A rapid intervention ARFF vehicle was at the crash scene within one and one-half minutes of the alarm from the control tower, and the fire was extinguished within two minutes of the first alarm. Before ARFF services could arrive, a quick and intense post crash fire killed nine aircraft occupants. Ten occupants survived, by exiting the aircraft prior to the secondary fire.

The working group did not consider the November 1996 commuter accident at Quincy, Illinois, in its review because the NTSB had not concluded its investigation at that time.

The Air Line Pilots Association (ALPA) expressed a minority position for one level of safety and stringent ARFF requirements at all certificated airports regardless of size of aircraft serving the airport. ALPA favored a 3-minute test response that is currently required of airports receiving scheduled operations of large air carrier aircraft, and offered suggestions for providing personnel needed for ARFF response. Among others, ALPA suggested that airport operators cross-train their employees (or tenant employees) to perform ARFF duties, or that the local community site a fire station on the airport. ALPA subsequently provided a position document that is available in the docket.

The FAA is not opposed to ALPA's position that ARFF coverage be provided at airports served by small air carrier aircraft. Current part 139 and this proposal permit the use of existing airport employees to perform ARFF duties so long as the provisions of part 139 are met. With FAA approval, an airport operator could arrange to have part, or all, of its ARFF responsibilities performed by an air carrier or fixed base operator (FBO) so long as the requirements of this part and the airport's certification manual are met.

However, ALPA's position on a standard 3-minute test response is impractical. Most local volunteer fire departments would not have volunteers present for every air carrier operation. Similarly, locating a fire station on the airport can mean that, during air carrier operations, firefighters would not be available to provide emergency services elsewhere in the community.

In connection with this rulemaking, the FAA is considering a clarification of agency policy on the use of airport revenue to promote the availability of ARFF services at small airports. Generally, a non-aeronautical municipal use of airport property must be charged a fair market rental rate for the airport to comply with grant assurances that require the airport to maintain a rate structure that makes it as self-sustaining as possible (see discussion of § 139.109 Duration of certificate). However, a municipal fire station on airport property may receive a reduction in rent proportional to the airport-related purpose and use of the station. In connection with the adoption of proposed ARFF requirements for airports serving small air carrier aircraft, the FAA would consider this reduction to apply to a municipal fire station located on a Class II, III, or IV airport when the municipal station is an essential element of the local agreement the airport uses to meet its ARFF obligations under part 139.

Since the ARAC submitted its report on the certification of commuter airports, the NTSB announced its findings on the commuter aircraft accident in Quincy, Illinois. The accident involved the runway collision of a United Express Flight 5925, a Beech 1900C commuter aircraft, and a Beech King Air, N1127D, during the landing sequence of the United Express and the take off of the King Air from Quincy Municipal Airport. The Quincy Municipal Airport has a limited airport operating certificate and only provides ARFF coverage during large air carrier operations. At the time of the accident, there were no large air carrier aircraft operations and ARFF services were not on site. All ten passengers and two crewmembers aboard Flight 5925 and the two occupants on the King Air were killed as the result of post-crash fires.

The NTSB found that the speed with which the fire enveloped the King Air, and the intensity of the fire, precluded survivability of the occupants. The occupants of the Beech 1900C did have the opportunity to escape but could not open external doors that had been damaged. The NTSB concluded that lives might have been saved had on-airport ARFF protection been required. However, the board recognized the economic difficulties on-airport ARFF requirements would place on smaller communities. In this regard, the NTSB recommended that the FAA develop ways to fund ARFF protection at airports serving scheduled passenger operations in aircraft with more than 10 seats.

Section 139.315 Aircraft Rescue and Firefighting: Index Determination

Airports certificated under part 139 that serve *scheduled* air carrier operations with more than 30 seat aircraft must provide ARFF coverage that is appropriate to the size of aircraft using the airport. Existing § 139.315 establishes criteria for determining the proper ARFF coverage. Requirements for this coverage are divided into five categories, or indexes, based on the length of the longest air carrier aircraft that departs the airport at a certain frequency. Index A prescribes the minimum ARFF standards (type of extinguishing agent, truck capacity, etc.) that an airport must provide during operations of air carrier aircraft less than 90 feet in length. Air carrier aircraft with 10–30 seats used in scheduled passenger service are typically less than in 90 feet in length.

Under this proposal, clarifications would be made to the requirements of existing § 139.315. Existing paragraph (c)(1) and (c)(2) would be combined into a single paragraph.

The current format of this paragraph has resulted in (c)(1) and (c)(2) being misinterpreted and airports complying with lower ARFF index requirements than intended.

A certificated airport serving scheduled air carrier operations must comply with the ARFF Index that corresponds to the largest aircraft as long as there are five or more average daily departures of that type of aircraft. However, confusion exists when the largest aircraft serving an airport has less than five daily departures. In such cases, a certificated airport must meet the next lower ARFF index requirements for the largest air carrier aircraft serving the airport, regardless on number of average daily departures.

For example, if an airport serves 10 daily departures of Index A aircraft, three daily departures of Index B aircraft, and four daily departures of Index C aircraft, the FAA intends for this airport to provide at least Index B ARFF coverage. Index B ARFF coverage would also be required at an airport receiving four daily departures of Index A aircraft, four daily departures of Index B aircraft, and three daily departures of Index C aircraft. The existing rule language has resulted in the incorrect interpretation that Index A ARFF coverage would be appropriate in both examples because daily departures were used as the determining factor rather than the largest aircraft serving the airport. When the largest aircraft serving a certificated airport has less than five daily departures, then aircraft size would determine the ARFF index.

The FAA also proposes revisions to this section to emphasize that in all circumstances, the minimum ARFF index will be Index A.

Section 139.317 Aircraft Rescue and Firefighting: Equipment and Agents

Existing § 139.317 prescribes standards for ARFF equipment and fire extinguishing agents. The FAA proposes revisions to this section to reflect changes made to the production of fire extinguishing agents.

The FAA proposes to add the phrase ''unless otherwise authorized by the Administrator'' to this section to provide relief to airports waiting for Federal funds to purchase adequate equipment, or to address other local circumstances that may require temporary use of alternative equipment or extinguishing agents. Long-term relief from the standards of this section would be considered under proposed § 139.321, Aircraft rescue and firefighting: Exemption.

In addition, the term ''clean agent'' would be added to this section. The term defines a new type of aircraft fire extinguishing agent that an airport operator could use to comply with this section, and as noted earlier, is used by the firefighting community to describe a category of fire extinguishing agents that replace halon 1211.

Under existing § 139.317, halon 1211 is specified as one of the fire extinguishing agents that an airport operator can use. However, chlorofluorocarbon chemicals, including halon 1211, have been identified as a stratospheric ozone depleter. The United States Environmental Protection Agency (EPA) banned the production of halon 1211 on January 1, 1994. Airport operators currently using halon 1211 will be required by the EPA to switch to authorized agents when their stockpiles are depleted and may only use halon 1211 during actual aircraft emergencies.

Under this proposal, most of existing § 139.317(i) would be deleted. The FAA proposes to remove references to specific standards for extinguishing agent substitutions and place these in an advisory circular. Only language allowing the use of alternate extinguishing agents authorized by the Administrator would be retained.

The FAA also proposes to remove language no longer needed in this section that provided relief to certain airport certificate holders whose ARFF vehicles were unable to comply with all the requirements of this section at the time of the regulation's last revision (November 1987). Since the 1987 revision, the FAA has funded through the Airport Improvement Program the purchase and rehabilitation of ARFF vehicles, and noncompliant vehicles have been replaced. However, the FAA recognizes that airports newly certificated (proposed Class III airports) may be using ARFF vehicles that do not comply fully with the requirements of this section. The exemption process of proposed § 139.321 would enable the FAA to consider relief from this section's requirements.

The FAA proposes a 2–year timeframe for those airports required for the first time to comply with the standards of this section (proposed Class II, III and IV airports). The proposed compliance dates should allow these airports adequate time to acquire funding for, and purchase of, ARFF equipment. Approximately 40 airports (both certificated and non-certificated) would have to obtain additional ARFF equipment. The FAA would consider a time extension for airports unable to comply within this 2-year timeframe.

Section 139.319 Aircraft Rescue and Firefighting: Operational Requirements

Existing § 139.319 prescribes standards for the training of ARFF personnel; ARFF vehicle marking, lighting, and readiness; and emergency access roads. This section also establishes criteria for a certificate holder to make adjustments to ARFF coverage to correspond to changes in air carrier operations. Currently, only airports serving scheduled operations of large air carrier aircraft are required to comply with § 139.319. Under this proposal, all classes of airports would be required to comply with the requirements of this revised section.

Existing § 139.319 would be revised to reflect current rescue and firefighting practices. Also, it would address a petition for rulemaking made by the Air Transport Association of America (ATA). As the result of these proposed changes, many existing paragraphs would be given new paragraph designations and titles to ensure a consistent format throughout the section.

Specifically, existing paragraph (g) would be moved to new paragraph (l) and titled ''Methods and procedures.'' This change would ensure that all references to compliance methods and procedures are consistently located at the end of each section. All references to specific series numbers within the AC system would be deleted. Instead, this revised paragraph would make a general reference to the AC system.

Several changes also would be made throughout new paragraph (h) (existing paragraph (i)) for clarity and to reflect changes in terminology used to describe fire extinguishing agents (see discussion of proposed § 139.317).

In addition, proposed paragraph (i) would contain existing requirements of paragraph (j), with several modifications. Language would be included in new § 139.319(i)(2) to clarify that rescue and firefighting personnel must be trained before initial performance of duties and, at a minimum, must receive annual recurrency training.

Also, the FAA proposes to clarify the frequency of training required for rescue and firefighting personnel. Many of the subject areas required under existing paragraph (j) (proposed new paragraph (i)) necessitate ongoing training, and ARFF personnel would not be expected to maintain currency with only a once-a-year course. Most ARFF organizations have a continuous training program

throughout the year. The FAA supports this continuous training approach and proposes a 12–month recurrent training requirement as the benchmark for the minimum training required.

The FAA also proposes, in new paragraphs (i) and (j), to require the use of hazardous material guidance. In August 1990, the ATA petitioned the FAA to amend part 139 ARFF procedures related to hazardous materials incidents. In its petition, ATA expressed concern that without proper training and guidance, ARFF personnel could take incorrect action in response to a hazardous materials incident that might endanger both the emergency crews and the general public. At that time, ATA stated that ARFF crews were relying solely on hazardous materials emergency response guidance required to be carried aboard the aircraft.

ATA recommended that § 139.319 be amended to require ARFF crews to be equipped with, and trained in the use of, the North American Emergency Response Guidebook published by Transport Canada, U.S. Department of Transportation, and the Secretariat of Communications and Transportation of Mexico. The ATA stated that the guidebook would promote a better understanding of ground emergency response and alleviate the need for ARFF personnel to be solely dependent of on-board information, which may or may not be available during an emergency, and may not be appropriate to a ground-based incident.

In response, the FAA published a summary of the petition in the **Federal Register** (55 FR 39299, September 26, 1990), and received 14 comments from airport operators, ATA and–ALPA. Most of the commenters agreed with the substance of the petition and recognized the value of providing ARFF personnel with guidance and training to properly respond to hazardous materials incidents. Several airport operators disagreed with ATA because many airports already equip ARFF personnel with the guidebook or provide similar information to ARFF personnel via a communication link. However, two airport operators expressed concern about requiring a specific document in part 139 that could become outdated and hamper existing hazardous materials emergency communication procedures already in place. Instead, these commenters preferred to focus such efforts on training.

In light of information and data provided by ATA and airport operators, the FAA proposes to change existing paragraph (j)(2)(x) ((proposed paragraph (i)(2)(x)), to revise the term ''aircraft cargo hazards'' to read ''hazardous materials/dangerous goods incidents.'' Similarly, new paragraph (j) would be added to this section prescribing a general requirement to equip aircraft rescue and firefighting vehicles with guidance for responding to hazardous materials/dangerous goods incident.

The FAA is a proponent of the North American Emergency Response Guidebook and proposes to require its use. This guidebook was developed jointly by the governments of Canada, Mexico, and the United States for use by fire fighters, police and other emergency services personnel who may be the first to arrive at the scene of a transportation incident involving hazardous materials or dangerous goods. The guidebook should be used by first responders to quickly identify the specific or generic hazards of the material(s) involved in the incident, and to protect themselves and the general public during the initial response phase of the incident. Other guidance material also may be needed.

While new paragraph (j) specifies the use of the North American Emergency Response Guidebook, it also would allow airport operators the flexibility to use other guidance material and to make such information available via direct communications links to ARFF personnel at the site of the incident (e.g., cellular telephone, radio, and other communication links).

New paragraph (i)(4) would impose requirements for emergency medical care training similar to existing requirements. The term ''emergency medical care'' would be amended to read ''emergency medical services.'' This change in terminology reflects current terminology used by the emergency response community. Further, it is proposed that emergency medical requirements be expanded to specify initial and recurrent training to eliminate any confusion over the frequency of such training.

Proposed paragraph (i)(5) would be a new requirement for the certificate holder to maintain records for two years from the date of any training given to meet the requirements of proposed § 139.319. Such records would, at a minimum, specify the type and date of training. To document compliance with this section, airport certificate holders already maintain these records and the FAA proposes to formalize this practice.

Similar to proposed § 139.317(l), new paragraph (m), titled ''Implementation,'' would specify a compliance date with airports that would be required for the first time to comply with the standards of this section (proposed Class II, III, and IV airports). The proposed compliance date allows these airports adequate time to acquire funding for, and purchase of, ARFF equipment and hire/train personnel. The FAA anticipates that approximately 110 airports (both certificated and non-certificated) would have to obtain additional equipment and personnel. Two years should be adequate time to secure Federal and local funds to purchase equipment and hire and train personnel. The FAA would consider a time extension for airports unable to comply within this 2-year timeframe.

Section 139.321 Aircraft Rescue and Firefighting: Exemptions

Existing § 139.321, Handling and storing of hazardous substances and materials, would be redesignated as § 139.323. Proposed § 139.321 is new and would establish procedures for certain airport certificate holders to request an exemption from the ARFF requirements of proposed §§ 139.317 and 139.319. This section would also detail what the FAA would consider in deciding to grant an exemption from the ARFF requirements. As proposed, the FAA could exercise its statutory authority to exempt certain airport certificate holders from the prescribed ARFF requirements. Through this statutory exemption, the FAA would maintain the necessary oversight of ARFF while ensuring that the ARFF requirements are appropriate for the airport size and type of air carrier operations.

Proposed paragraph (a) would establish that the certificate holder of an airport that meets the qualifications for an exemption, as specified in proposed § 139.111, may petition the Associate Administrator for Airports (as delegated by the Administrator) for an exemption to the ARFF requirements of proposed §§ 139.317 and 139.319. Specifically, the airport certificate holder would have to demonstrate that the ARFF requirement it is seeking exemption from would be unreasonably costly, burdensome, or impractical.

Proposed (b) would set forth procedures a certificate holder must take to request an exemption, including the information that must be included in the petition, i.e., the nature and extent of relief sought, and any alternative means of compliance.

Proposed paragraph (c) would establish criteria the FAA would use to grant exemptions on a case-by-case basis. As noted in the discussion of alternatives, any exemption would not relieve an airport certificate holder from its obligation to provide some level of ARFF coverage. All certificated airports would be required to provide ARFF coverage.

Proposed § 139.321(c) requires the certificate holder to submit a petition requesting relief from the requirements of §§ 139.317 and 139.319 that shows an equivalent level of safety would be provided during air carrier operations in response to aircraft emergencies. This would include provisions made by the certificate holder for prearranged firefighting and medical response, equipment and fire extinguishing agents to be used, and training of firefighting and medical responders. Also, this section specifies that the certificate holder will arrange for such emergency equipment and personnel to be on-airport 15 minutes before and 15 minutes after an air carrier aircraft takes off or lands. This should not be interpreted to mean that such pre-arranged ARFF services would necessarily be required to be stationed at the airport or wait on-airport during extended periods between flights.

Of approximately 570 civilian airports currently certificated under part 139, operators of approximately 500 of these airports would be eligible to petition for an exemption under this new section (as they have less than one quarter of one percent of the total number of annual passenger enplanements). The operators of the estimated 40 airports that could be newly certificated (proposed Class III airports), if this proposal is adopted, would be eligible to petition for an exemption from ARFF requirements as well. The FAA does not anticipate that all eligible certificate holders would apply for an exemption under this new section.

The FAA expects that most requests for an exemption would be made by airports that would have to provide more frequent ARFF services, such as some proposed Class I, as well as Class II and III airports. An analysis of existing ARFF services at these airports revealed that approximately 110 of these airports (approximately 50 Class I, 30 Class II, and 30 Class III airports) would require additional equipment or personnel to comply with proposed ARFF requirements (see discussion of ARFF costs in the Regulatory Evaluation section). To minimize disruptions at such airports, certificate holders at these facilities would have two years to comply with proposed changes to ARFF requirements. During this time, a certificate holder could choose to comply with these new requirements or request an exemption. Airport operators currently holding a ''limited'' certificate could request an exemption based on the currently approved ARFF response for their airport.

The FAA requests comments on this exemption process, including economic and operational data that would assist the FAA in evaluating the effectiveness of this process.

Section 139.323 Handling and Storing of Hazardous Substances and Materials

In this proposal, existing § 139.321, would be redesignated as proposed § 139.323. Existing § 139.321 requires certain airport operators to establish and implement procedures for the safe storage and handling of aviation fuel, lubricants, and oxygen, and when acting as a cargo agent, hazardous materials regulated under 49 CFR 171. This section also requires the certificate holder to conduct quarterly inspections of certain fueling agents. Generally, this proposal would not change these requirements.

Changes are proposed to existing paragraphs (b), (c), (h), and (i) of this section, as described below. All proposed airport classifications would be required to comply with the requirements of this revised section.

Airport operators that currently serve scheduled operations of large air carrier aircraft (proposed Class I airports) would continue to comply with existing § 139.321. Operators of airports holding an LAOC (proposed Class II and IV airports) would be required to update existing procedures for the storage and handling of hazardous materials required under existing § 139.213 to ensure their existing procedures meet the standards. Also, operators of proposed Class III airports would be required for the first time to develop and implement procedures for the storage and handling of hazardous materials. Depending on the local fire code, some operators of proposed Class III airports may have already developed such procedures and would need only to document such procedures in their ACM.

The majority of the ARAC Commuter Airport Certification Working Group recommended that airports serving small air carrier aircraft not be required to comply with this section. The working group expressed a need for such procedures, but noted most airport operators already have procedures that appear to be adequate for storing and handling hazardous materials at smaller facilities. Instead, the majority recommended that smaller facilities meet local fire codes pertaining to storage and handling of hazardous substances and materials, including aircraft fuel. The majority stated that this approach would adequately address preparedness and safety issues without being overly burdensome.

Representatives of the National Air Transportation Association (NATA) and ALPA disagreed with the majority position, and recommended that the FAA require airports serving small air carrier aircraft to comply with requirements of the existing section. ALPA raised concerns that local fire codes may not adequately address aircraft storage and refueling operations, and noted the working group's economic analysis found compliance with this section would not create an economic burden.

The FAA has determined that the requirements of this section are common safety measures and would not be unduly burdensome. Moreover, these standards were developed as a result of a cooperative effort between the FAA, airport operators, and FBO's, and have been successfully used for the past several years by airport operators and aircraft fuelers nationwide.

The FAA proposes to delete the term ''grounded'' from paragraph (b)(1). This paragraph would then correspond with the NFPA Standard 407, titled ''Standard for Aircraft Fueling Servicing.'' The NFPA standard recommends that only bonding should be used during aircraft fueling or refueler loading.[3] The FAA actively participates in development of NFPA codes and standards related to aviation fueling.

The terms ''grounding'' and ''bonding'' describe methods to dissipate electrostatic charges created when aviation fuels pass through pumps, filters, and piping, and may consequently ignite fuel. Bonding is a procedure that provides a conductive path to equalize the potential electrostatic differential between fueling equipment and aircraft. Bonding is accomplished by connecting a cable between the fueling equipment and the aircraft. Alternatively, grounding attempts to reroute and dissipate potential charges into the ground by connecting the aircraft by a cable to a static wire, typically a rod in the ground.

The FAA concurs with NFPA 407 as testing has shown that most grounding provides little, if any, protection from electrostatic hazards. In addition to corrosion of rods in the ground, grounding points may have high electrical resistance. The static wire may not be sufficient to carry the potential current and, if the wire fuses, may actually constitute a source of ignition.

Since 1990, the FAA has encouraged the use of bonding in aircraft fueling, fuel delivery and hydrant servicing. The

[3] *NFPA 407—Standard for Aircraft Fuel Servicing,* National Fire Protection Association, 1996 Edition.

FAA Office of Airport Safety and Standards has issued two informational notices, known as ''CERTALERTS,'' to alert FAA inspectors and airport operators to changes in grounding and bonding. ''CERTALERTS'' are advisory in nature and are issued periodically to provide timely information to certificate holders on a broad range of safety and airport certification related subjects. Subsequent to the issuance of NFPA 407, the FAA issued CERTALERT #91–06 (September 18, 1991) and CERTALERT #90–08 (November 7, 1990) urging the use of bonding only, and suggesting design requirements for the procedure. The FAA proposes to use this rulemaking action to codify this recommended practice.

In addition, paragraph (b)(6) would be modified to delete an implementation date that has already passed. In its place, a new requirement is proposed that would require operators of proposed Class III airports to complete specified training within one year.

Existing paragraph (e) would be modified to include requirements for annual recurrency training for fueling agent supervisors and employees. This is in response to requests by airport operators for clarification on frequency training. This requirement would be similar to recurrency training requirements proposed for other airport personnel (see discussion of § 139.319, Aircraft rescue and firefighting: Operational requirements) and training currently used by fueling agents. Most fueling agents work directly for, or indirectly represent, large fuel or aircraft service companies that have established safety programs that require periodic recurrency training.

Proposed changes to existing § 139.321(h) would clarify the certificate holder's responsibility for fuel storage areas owned or operated by tenant air carriers. Paragraph (h) currently exempts the certificate holder from overseeing part 121 or 135 air carrier fueling operations to ensure compliance with requirements of § 139.321. However, there are no equivalent requirements under parts 121 and 135 directing air carriers to inspect and maintain their fuel storage areas, as is required of airport operators under part 139. Sections 121.135 and 135.23 only address refueling aircraft and fuel quality.

On November 25, 1990, a fire erupted at a fuel storage and dispensing facility about 1.8 miles from the main terminal of Stapleton International Airport in Denver, Colorado. The fire was extensive, burning for 49 hours, and required a total of 634 firefighters, 47 fire units, and 4 contract personnel. More than 56 million gallons of water and 28,000 gallons of foam concentrate were expended to extinguish the fire. No injuries or fatalities occurred as a result of the fire.[4]

The NTSB investigation concluded that the probable cause of this accident was damaged pumping equipment resulting in leakage and ignition of fuel. The NTSB also concluded that a similar incident could be avoided if airport certificate holders were responsible for inspecting all fuel storage areas on the airport, including air carrier facilities.

The FAA concurs with this recommendation and proposes to delete existing paragraph (h) to avoid any possible confusion over who is responsible for maintaining and inspection fuel storage areas used by part 121 and 135 air carriers. Subsequently, existing paragraph (i) would become new paragraph (h). As proposed, new paragraph (h) would specify that the requirements of § 139.321 are applicable to air carrier fuel storage areas located on the airport. Existing paragraph (c) also would be amended to remove references to existing paragraph (h).

In addition, existing paragraph (i) (new paragraph (h)) would be revised to delete references to the specific series number within the AC system. Instead, this revised paragraph would make a general reference to the AC system.

Section 139.325 Traffic and Wind Direction Indicators

Under this proposal, the requirements of existing § 139.323 would be moved to proposed § 139.325. Existing § 139.323 prescribes conditions that require certificate holders to provide a wind cone and a traffic pattern indicator, and the standards for these devices. All proposed airport classifications would be required to comply with this proposed section.

Changes are proposed to clarify that airport operators must comply with the requirements of this section in a manner satisfactory to the FAA, and that the available AC's contain some methods of compliance that are acceptable to the Administrator. In addition, this proposal would revise standards for segmented circles and supplemental wind cones.

Existing § 139.323 requires airport certificate holders serving scheduled operations of large air carrier aircraft (proposed Class I airports) to provide traffic and wind indicators (such as windsocks) at specific locations on the airport. In addition, certain night and uncontrolled traffic operations require traffic and wind indicators. This requirement would not change under this proposal. Airport certificate holders having a LAOC (proposed Class II and IV airports) and operators of proposed Class III airports would need to comply with standards of this revised section.

Further, all certificate holders would be required to install supplemental wind cones adjacent to runway ends where the primary wind cone is not visible to a pilot on final approach or during takeoff. The existing standard only requires the use of supplemental wind cones if the airport is located in Class B airspace. Installation of supplemental wind cones would ensure current wind direction information is available to all pilots rather than just those using longer runways of airports typical of Class B airspace. Longer runway distances may limit a pilot's ability to see a mid-field wind cone during takeoff or landing. Linking the current standard to Class B airspace has unintentionally excluded those smaller airports with longer runways, particularly those military bases that have recently converted to civilian use.

Existing paragraph (b) also would be revised to update the standard for traffic indicators at airports without a control tower. Language proposed corresponds more closely to existing FAA guidance provided to pilots on visual indicators at airports without control towers. Specifically, the requirement for a segmented circle would be deleted and a new standard would be added for the location of landing strip and traffic pattern indicators.

While many operators of airports serving scheduled operations of small air carrier aircraft already provide traffic and wind indicators, the FAA believes that requiring all certificated airports to comply with this section would ensure standardization.. This position was supported by the ARAC Commuter Airport Certification Working Group report.

Section 139.327 Airport Emergency Plan

Existing § 139.325 requires certain certificate holders to develop and implement an emergency plan and to conduct tests of this plan. The section also specifies what the emergency plan must contain. In this proposal, existing § 139.325 would be moved to proposed § 139.327 and revised to address all proposed airport classifications. Changes also would be made to emergency response requirements for

[4] *Aviation Accident Report—Fuel Farm Fire at Stapleton International Airport, Denver, Colorado, November 25, 1990:* NTSB AAR–91/07, National Transportation Safety Board, October 1, 1991.

incidents involving fuel fires and hazardous materials.

Airport certificate holders that currently serve scheduled operations of large air carrier aircraft (proposed Class I airports) must comply with existing requirements of § 139.325 to develop, implement, and test an emergency plan. These requirements would be extended to airport certificate holders currently holding a LAOC (proposed Class II and IV airports) and proposed Class III airport operators.

Airport certificate holders currently required to have an airport emergency plan must periodically test their plan. Specifically, these airport operators are required to conduct a disaster drill (know as a full-scale airport emergency plan exercise) every three years to test the validity of their emergency plan. A full-scale airport emergency plan exercise is a mock airport disaster staged to test and practice airport emergency procedures. In such exercises, the airport operator typically involves all mutual aid participants (local hospitals, police, fire departments, etc.), emergency vehicles and other equipment, and airport personnel and tenants, as specified in the airport emergency plan. The exercise usually is an all day event culminating several months of preparation, and is conducted using airport resources and support from the local community.

In the years in between the full-scale exercise, airport certificate holders are required to review their emergency plans to ensure procedures are still current and all parties involved know their responsibilities. The testing requirements for airports serving scheduled operations of large air carrier aircraft (proposed Class I airports) would not change as a result of this proposal.

Operators of proposed Class II, III, and IV airports would be required to annually review their emergency plan to ensure procedures are current and all parties involved know their responsibilities. These operators would not be required to conduct full-scale emergency exercises. Many of the communities that own and operate such facilities are small and have very limited resources. However, the FAA encourages these airports to work with their communities to develop feasible disaster drills.

The annual review, often referred to as a ''table-top'' exercise, would involve the airport meeting with responsible parties around a map of the airport to discuss possible emergency scenarios. The review is a reasonable requirement for airports serving small air carrier scheduled operations, and will ensure emergency procedures remain current without being unduly burdensome.

The ARAC Commuter Airport Certification Working Group recommends this approach to emergency preparedness in its report. The report states the cost of a full scale airport emergency plan exercise could be overly burdensome for airports serving small air carrier aircraft, and supported the use of table top exercises only. The report also recommended that such tabletop exercises include a field tour, identification of emergency staging areas, and perimeter security requirements to control access to and from disaster areas.

Other requirements throughout this section also would be modified. Existing paragraph (a) would be revised to clarify that the airport emergency plan provide for response to an emergency involving the largest air carrier aircraft serving the airport. While this requirement is currently found in existing paragraphs that address medical services and water rescue (paragraphs (c) and (f)), it has always applied to the entire section. To ensure that all applicable response measures accommodate the largest air carrier aircraft serving an airport, the FAA proposes moving this requirement to paragraph (a).

In response to an NTSB recommendation, the FAA proposes that existing paragraph (b) be modified to require certificate holders to include in the airport emergency plan instructions for response to fires at fuel farms or fuel storage areas.

In its investigation of the Denver fuel farm fire (see discussion of proposed § 139.323, Handling and storing of hazardous substances and materials), the NTSB found that while airport firefighters and the Denver Fire Department promptly responded to the fire, they were unable to maintain a continuous flow of foam onto the fire, and the fire reignited and quickly intensified. The NTSB concluded that the airport and local firefighters did not have, nor could they have been expected to have, a sufficient supply of foam concentrate to fight a fuel fire of this magnitude. However, the City of Denver and its fire department had not developed a contingency plan for a fire of this type, and eventually a private contractor that specialized in large-scale fuel fires was brought in to extinguish the fire. Arrangements for this private contractor were made only after a tenant air carrier became concerned that its tanks, neighboring those burning, would be damaged.[5]

[5] Ibid, pg. 53.

The NTSB determined this lack of procedures for responding to a fuel storage fire of this magnitude prolonged the duration of the emergency. The NTSB recommended that the FAA require part 139 certificate holders to have contingency plans for fighting very large fires such as fuel storage area fires. The FAA concurs with this recommendation and proposes to modify existing paragraph (b) to require certificate holders to include in the airport emergency plan instructions for response to fires at fuel farms or fuel storage areas.

Existing paragraph (b)(5), proposed paragraph (b)(6), would also be amended to reflect more current terminology. The term ''radiological'' would be replaced with the term ''hazardous materials/dangerous goods.'' This term would better reflect the type of incidents airports need to be prepared for, including incidents involving corrosive, biological, explosive, radioactive, or toxic air cargo or ground freight. This change also addresses the ATA petition for rulemaking regarding hazardous materials/dangerous goods incident guidance (see the discussion under proposed § 139.319).

Additionally, existing paragraph (d)(3) would be modified to include the new term ''notification.'' The revised section would allow airport operators to use either an alarm system or a notification system to announce an emergency. The ARAC Commuter Working Group report noted that smaller airports required to have an emergency plan may not have the resources to implement a sophisticated, automated alarm system used by many larger facilities. Instead, these smaller airports may use a notification system that is as simple as a series of telephone calls to summon emergency response. The requirement would ensure that an adequate system is in place, and periodically tested. Each airport would determine the type of system that best meets its needs.

Existing paragraph (g)(5) would be moved to new paragraph (h) and existing paragraph (h), prescribing acceptable methods and procedures, would become new paragraph (i). New paragraph (h) would prescribe the requirement for, and the frequency of, full-scale airport emergency plan exercises, as described earlier.

Requirements in paragraphs (d) and (f) that relate to water rescue situations and coordination with control towers would be clarified to apply only to those airports with water on or adjacent to the airport, or with a control tower.

New paragraph (j) would allow certificate holders of proposed Class II,

III, and IV airports one year from the effective date of the rule to submit their emergency plans to the FAA for approval. Even though the FAA provides guidance materials to aid in the development of an airport emergency plan, the process will require coordination and cooperation with the surrounding communities and may be a time consuming process.

Section 139.329 Self-Inspection Program

Existing § 139.327 requires certificate holders to conduct daily inspections of the movement area to ensure the airport remains in compliance with part 139. This section specifies additional conditions that require inspections. Also, the certificate holder is required to have a system to notify air carriers of field conditions and a recordkeeping system to document inspections.

In this proposal, existing § 139.327 would be redesignated as proposed § 139.329 and revised to address training requirements for individuals conducting airport inspections. Language also would be added to permit airport inspections to be conducted by individuals other than employees of the airport operator. All proposed airport classes would be required to comply with this revised section.

The proposed changes to existing § 139.327 will assist existing and new airport certificate holders in understanding their responsibilities to inspect their facilities. As a consequence, airport operators already required to have a self-inspection program under existing § 139.205 would need to modify their inspection program.

Operators of airports that currently serve scheduled operations of large air carrier aircraft (proposed Class I airports) must continue to comply with the requirements of this section, and would be required to modify their inspection program. Airport certificate holders holding an existing LAOC (proposed Class II and IV airports) would be required to update existing self-inspection programs. In addition, operators of proposed Class III airports would be required to develop and implement an self-inspection program.

Existing paragraph (a) would be amended to allow airport operators to designate individuals of their choice to conduct inspections as long as the individuals meet the requirements of this section. For example, the proposed change would allow the airport operator to designate an individual other than airport personnel, such as air carrier station personnel or an employee of an FBO, to conduct required inspections when airport personnel are not present during hours of scheduled operations. A similar proposal was recommended by the ARAC Commuter Airport Certification Working Group to permit airports serving scheduled operations of small air carrier aircraft to designate inspection responsibilities.

This proposal could reduce labor costs associated with personnel working overtime or the need to hire additional employees to cover early morning or late evening operations, particularly when tenant employees will be present during these hours of operation. However, the certificate holder would be responsible for ensuring that inspections are done correctly, and that individuals conducting inspections are qualified to perform the duties associated with the inspection.

Personnel requirements of existing paragraph (b) would be enhanced to require that personnel meet the requirements of proposed § 139.303, Personnel, and to be trained in specific topics, including airport familiarization and discrepancy reporting procedures. This change is necessary to ensure that certificate holders are using qualified individuals to conduct airport inspections, particularly in light of the proposal to use designees to perform this function.

Section 139.331 Ground Vehicles

Under this proposal, the requirements of existing § 139.329 would not be changed but the section would be redesignated as proposed § 139.331. Existing § 139.329 requires the certificate holder to limit access to movement areas to those ground vehicles necessary for airport operations. This section also requires the certificate holder to ensure that employees, tenants, or contractors who operate ground vehicles in the movement area are familiar with established ground vehicle operating procedures. Currently, operators of airports certificated to serve scheduled operations of large air carrier operations must comply with existing § 139.329.

Minor modifications are proposed to clarify that the requirements of this section are implemented in a manner satisfactory to the FAA. All certificated airports serving scheduled air carrier operations (proposed Class I, II, and III airports) would be required to comply with this revised section.

Except for representatives of the National Air Transportation Association (NATA) and ALPA, the ARAC Commuter Airport Certification Working Group report recommended that operators of airports serving scheduled operations of small air carrier aircraft be required to comply only with training and reporting measures of paragraphs (e) and (f) of this section. The working group noted the importance of familiarization with proper vehicle safety procedures; however, the majority of the group was concerned that other requirements of this section would be operationally or economically excessive for the limited number of scheduled air carrier operations at these airports.

The working group also noted that many of these airports do not have towers, and therefore do not warrant extensive ground vehicle requirements contained in this section. The FAA disagrees with this position. While existing § 139.329(c) requires the use of two-way radios, escort vehicles, and specialized procedures when radios are inoperative, these measures are only applicable at airports where an air traffic control tower is operational. Further, operators of airports with FAA control towers enter into a letter of agreement with FAA Air Traffic Control that requires ground vehicle procedures in movement areas. Operators of most affected airports already work with their tenants to implement such procedures.

Also, standards have been developed for the consistent application of this section as a result of a cooperative effort between the FAA, airport operators, and FBO's. These standards have been successfully used for the past several years, and should continue in a manner that is already well understood and, in most cases, used by airport operators and their tenants nationwide.

Section 139.333 Obstructions and Section 139.335 Protection of Navaids

In this proposal, the requirements of existing §§ 139.331 and 139.333 would remain substantially unchanged but would be redesignated as proposed §§ 139.333 and 139.335, respectively. These sections specify standards for obstructions, and the protection of navigational aids.

Clarifications are proposed that state that the requirements of this section must be implemented in a manner satisfactory to the FAA, and that the AC's contain some methods of compliance that are acceptable to the Administrator. All certificated airports serving scheduled air carrier operations (proposed Class I, II, and III airports) would be required to comply with these revised sections.

Existing § 139.331 (proposed § 139. 333) requires certificate holders to ensure that each object within its area of authority that penetrates imaginary surfaces, as provided in part 77, Objects Affecting Navigable Airspace, is

removed, marked, or lighted. Existing § 139.333 (proposed § 139.335) requires the certificate holder to protect against the derogation of electronic or visual navigational equipment (navaids) and air traffic control facilities located on the airport. This includes protection against vandalism, theft and construction that may cause interference.

Both the FAA and the ARAC Working Group agree that airports serving scheduled operations of small air carrier aircraft should meet these requirements. Many of these airports already provide for the removal or marking of obstacles, and have procedures in place to protect navaids. This minimizes disruption of aircraft operations and limits liability.

Section 139.337 Public Protection

Under this proposal, the requirements of existing § 139.335, would not be changed but the section would be moved to proposed § 139.337. Existing § 139.335 requires certificate holders to prevent the inadvertent entry of persons or vehicles to the movement area, and to provide reasonable protection of persons and property for aircraft blast. All certificated airports serving *scheduled* air carrier operations would be required to comply with this section. This would include proposed Class I, II, and III airports.

This section would continue to require the airport certificate holders to provide safeguards to prevent inadvertent entry to movement areas by unauthorized persons or vehicles, and to protect persons and property from aircraft blast. While airports serving scheduled operations of small air carrier aircraft typically already provide the public protection required by this section, the FAA wants to ensure a standard minimum level of public protection at all airports serving scheduled air carrier operations.

The ARAC Commuter Airport Certification Working Group also recommended that airport certificate holders provide protection from inadvertent entry and from aircraft blast as required by this section, with the exception of existing § 139.335(b). The working group suggested that § 139.335(b), referencing security fencing requirements, be deleted. This section is applicable to all airports serving scheduled air carrier operations, including those airports that must also comply with 14 CFR 107, Airport Security. The FAA proposes to leave paragraph (b) unchanged because it achieves the goal of preventing inadvertent entry.

Section 139.339 Wildlife Hazard Management

The FAA proposes to move the requirements of existing § 139.337, to proposed § 139.339. Existing § 139.337 establishes criteria for when a certificate holder is required to develop and implement a wildlife hazard management plan. This section specifies what this plan must include, and the action the certificate holder must take to respond to wildlife hazards.

This proposed section would update the terminology and to clarify what is expected of the certificate holder when developing a wildlife hazard management plan. All operators of certificated airports serving *scheduled* air carrier operations would be required to comply with this section. This would include proposed Class I, II, and III airports.

Some operators of proposed Class II and III airports would be required under proposed § 139.339 to conduct a wildlife hazard assessment, and formulate and implement a wildlife hazard management plan. Thus, the FAA proposes to change existing wildlife hazard management requirements to assist airport operators that would be complying with these requirements for the first time to better understand their responsibilities. As a consequence, airport certificate holders already required to comply with these requirements (proposed Class I airports) would need to make minor modifications to their airport wildlife hazard management plan.

If this proposal is adopted, existing paragraph (f) would be moved to the beginning of this section and become new paragraph (a). The requirement that an airport operator take immediate action to alleviate wildlife hazards would not change. Rather, the FAA proposes to reemphasis the importance of this requirement. Existing paragraph (a) would become new paragraph (b) and all other paragraph designations would be changed accordingly.

In proposed paragraph (b) (existing paragraph (a)), the term ''ecological study'' would be changed to ''wildlife hazard assessment'' to reflect more accurately the type of wildlife evaluation required to be conducted at airports.

Paragraph (c) would be amended to clarify that the wildlife hazard assessment must be conducted by a ''qualified wildlife damage management biologist.'' The FAA has determined that the potential for loss of life and equipment resulting from wildlife aircraft strikes requires the conduct of hazard assessments by persons having the education, training, and experience in wildlife hazard assessments. This new term is used throughout the revised section. The term ''circumstances'' would be added to paragraph (c)(1) to specify that an assessment must contain either the event, such as an actual aircraft strike, or the circumstances, *e.g.*, frequent sighting of deer crossing runways, prompting the assessment. Also, new paragraph (c)(5) would be added to require the airport certificate holder to include in the wildlife hazard assessment the recommended actions from the qualified wildlife damage management biologist for reducing the wildlife hazard.

Several modifications would be made to proposed paragraph (d) to improve clarity. A new item would be added to the list of considerations contained in this paragraph used to determine a need for a wildlife hazard management plan. New paragraph (d)(2) specifies that the FAA would take into consideration any actions recommended by the wildlife hazard assessment in determining the need for a certificate holder to have a wildlife hazard management plan. The FAA would typically recommend a wildlife hazard management plan if actions to reduce wildlife hazards are recommended in the wildlife hazard assessment required by proposed paragraph (b) of this section.

Proposed paragraphs (e)(1) and (e)(2) (existing paragraphs (d)(1) and (d)(2)) would be reordered for clarity, but the language remains the same. However, new paragraph (e)(3) would be added to clarify that the approved wildlife hazard management plan is part of the ACM. This would help assure that the certificate holder takes action to reduce wildlife hazards at its airport.

Changes to improve clarity also are proposed for new paragraph (f) (existing paragraph (e)). This paragraph details what an airport certificate holder should include in a wildlife hazard management plan. In particular, the requirement for periodic reviews of the plan would be amended to require annual reviews. This is intended to remove any ambiguity as to when a review is needed.

Existing paragraph (g) would be redesignated as new paragraph (h) and modified to delete references to specific AC series numbers. Instead, this revised paragraph would make a general reference to the AC system. New paragraph (h) would allow for some proposed Class II or III airports to implement less than full wildlife mitigation procedures where air carrier operations are so few or infrequent that any large expenditure would be unduly burdensome or costly.

Section 139.341 Airport Condition Reporting, and Section 139.343 Identifying, Marking, and Reporting Construction and Other Unserviceable Areas

As proposed, existing §§ 139.339 and 139.341 would be moved to proposed §§ 139.341 and 139.343, respectively. These sections require the certificate holder to report changed airfield conditions to air carriers, and prescribes standards for the marking and reporting of construction and other unserviceable areas of the airfield.

The requirements of these sections would remain substantially the same. References to other section numbers and the term ''Airport Certification Specifications'' would be changed to reflect proposed certification changes. Minor clarifications also are proposed that the requirements of these sections must be met in a manner satisfactory to the FAA, and that the AC's contain some methods of compliance that are acceptable to the Administrator.

Airports that currently serve scheduled and unscheduled operations of large air carrier aircraft (proposed Class I, II, and IV airports) would continue to have to comply with existing § 139.339 requirements as would operators of newly certificated proposed Class III airports. Existing § 139.339 requires airport certificate holders to collect and disseminate information on the conditions of the airport, including any construction or maintenance activities, weather or animal hazards, and nonfunctional equipment and services. In most instances, this currently would require the certificate holder to use FAA's pilot notification system, the Notices to Airmen (NOTAM) System.

Under this proposal, such condition reporting requirements would remain the same, except that the NOTAM system need only be used when appropriate. Since the current condition reporting requirement was incorporated into part 139, the NOTAM system has changed and some airport condition reports are no longer accepted into this system. Also, the term ''safety area'' would be added to paragraph (c)(2) to ensure that airport users are notified of irregularities in the safety area, in addition to those in the movement area, loading ramps, and parking areas.

The ARAC Working Group report supports the requirement that airports serving scheduled operations of small air carrier aircraft meet the requirements of proposed § 139.341 (existing § 139.339). . Most of these airports already make use of the NOTAM system and have in place procedures to alert their users to airport conditions as well.

Similarly, existing § 139.341 (proposed § 139.343) requires the airport certificate holder to report and mark any construction or unserviceable areas, and associated equipment that may create a hazard. The requirements of this section would remain unchanged, and all certificated airports serving *scheduled* air carrier operations would be required to comply with this section. This would include proposed Class I, II, and III airports.

Again, many of these airports have procedures in place to mark or light construction areas and unserviceable areas, and as such, this section should not pose a burden. It would, however, ensure that airport operators comply with these safety practices in a consistent and regular manner.

Section 139.345 Noncomplying Conditions

Existing § 139.343 requires a certificate holder to restrict air carrier operations in those areas of the airport that have become unsafe and no longer comply with the requirements of subpart D of part 139. Under this proposal, the requirements of this section would not be changed but the section would be redesignated as proposed § 139.345.

All proposed airport classifications would be required to comply with this section. This section should be applicable to all certificated airports to ensure that when an airport operator cannot meet the requirements of subpart D, as specified in its certification manual, action is taken to prevent air carriers from operating in those portions of the airport where possible unsafe conditions exist.

Section 121.590 Use of Certificated Land Airports

Currently, § 121.590 requires most air carriers conducting part 121 operations to operate into part 139 certificated airports. Passenger-carrying operations with airplanes designed for less than 31 passenger seats may operate into an airport that is not certificated under part 139, if the airport meets certain requirements of paragraph (b) of § 121.590. An airport designated by an air carrier as an alternate airport need not be certificated under part 139.

As proposed, existing § 121.590 would be amended to conform to the proposed changes to part 139. While most air carriers under part 121 would continue to be required to conduct their operations at airports certificated under part 139, provisions excepting certain air carrier operations from this requirement would be modified to correspond to proposed changes to part 139.

Language has been added to paragraph (a) to clarify that in addition to conducting part 121 operations into an airport certificated under part 139, an air carrier must ensure that the airport is certificated to serve the particular airplane used for the operation. The size of air carrier aircraft that airports certificated under part 139 are allowed to serve varies, depending upon how the airport is certificated. Thus, an airport certificated under part 139 to serve smaller air carrier aircraft, may not have adequate services to serve large air carrier aircraft, particularly emergency rescue services. This modification would ensure part 121 operations are being conducted only at airports that have appropriate safety measures and emergency services for the size of aircraft being used.

A new paragraph (b) is proposed to address air carrier and commercial operations conducted into airports operated by the U.S. government. Existing paragraph (b) would be amended and would become new paragraph (c). New paragraph (b) would permit air carriers and commercial operators conducting part 121 operations to use U.S. government-operated airports. This change corresponds to proposed part 139 revisions that clarify that airports operated by the U.S. government are not subject to part 139 (see discussion under § 139.1 Applicability). Thus, air carriers and commercial operators using these airports are not subject to § 121.590(a), and may use a U.S. government-operated airport if such an airport meets the equivalent safety standards of those required under part 139, as approved by the FAA.

While the FAA does not have the authority to certificate U.S. government-operated airports, it does have the authority under part 121, as noted above, to require air carriers and commercial operators to conduct their operations into airports that meet appropriate safety standards. The FAA believes this is necessary to ensure that air carriers and commercial operators conducting part 121 operations meet the highest practicable level of safety while engaging in common carriage operations. However, proposed changes to part 139 could result in part 121 air carriers desiring to conduct operations into U.S. government-operated airports that are not certificated under part 139. New paragraph (b) would resolve this inconsistency and allow air carriers the flexibility to use these airports, if such facilities meet the equivalent safety

standards of those required under part 139.

In addition, a new paragraph (c) is proposed to clarify that an air carrier or commercial operator conducting domestic and flag operations with turbojet powered airplanes designed for fewer than 10 passenger seats may operate into airports not certificated under part 139. This is a modification of the existing exception found in § 121.590(b) for air carriers conducting passenger-carrying operations with airplanes designed for less than 31 passenger seats. The existing exception would be amended to correspond with proposed changes to part 139 that would require the certification of airports serving certain air carrier aircraft with less than 30 seats. New paragraph (c) also would allow domestic and flag operations with airplanes designed for more than 9 and fewer than 31 passenger seats within the State of Alaska to operate into airports not certificated under part 139. This addition would correspond to the statute exception that airports in the State of Alaska serving such operations need not be certificated by the FAA. Both types of operations described in new paragraph (c) would be required to operate at airports that meet certain safety criteria (such as runway lighting and pavement appropriate for the type of aircraft used), as currently required under § 121.590(b).

Also, the term ''commercial operator'' would be added to this section to ensure that an intrastate operator certificated under part 121 only operates into an airport that is appropriate for the operator's particular airplane and operation.

**Implementation**

On publication of this NPRM, the public will have 90 days to submit comments on this proposal (see discussion under ''Comments Invited''). All comments received will be considered before the FAA takes action on the proposal. Should the FAA decide to proceed with this proposal, a final rule would be issued.

In the final rule, the FAA prescribes a date that the rule becomes effective. The final rule may also specify other dates by which regulated parties must implement certain requirements. This is often the case when requirements necessitate that the regulated party secure funds, initiate construction, or procure and install equipment.

Under the statutory authority the FAA to certificates airports serving scheduled operations of small air carrier aircraft including provisions for a congressional review of the final regulations concerning these airports before these regulations take effect. Title 49 U.S.C. 44706(e) stipulates that any regulation pertaining to these airports ''shall not take effect until such regulation, and a report on the economic impact of the regulation on air service to the airports covered by the rule, has been submitted to Congress and 120 days have elapsed following the date of such submission.'' If a final rule results from this proposal, date of issuance, and any effective and implementation dates associated with this rule, would be adjusted accordingly to allow for the completion of this Congressional review.

The FAA proposes to allow 90 days from the effective date of the rule for operators of proposed Class I airports currently holding an AOC to make the necessary changes to their ACM's (see proposed § 139.101 General Requirements). These airports would be required to revise their manual to implement new recordkeeping and personnel training requirements. To a great extent, these airports already comply with these requirements and would need to document procedures already in place. The FAA believes that in such cases, additional time to procure funds and secure contracts for equipment or services would not be necessary.

The FAA proposes to allow 240 days from the effective date of this amendment for operators of proposed Class II and III airports to submit, have approved, and implement an ACM (see proposed § 139.101, General requirements.) This timeframe would apply to airports certificated for the first time (proposed Class III airports), and those airports holding an LOAC that would be required to have a Class II AOC as the result of this rulemaking.

As operators of proposed Class II airports would be complying with the emergency plan requirement for the first time, the FAA proposes to allow these certificate holders one additional year to comply (see proposed § 139.327(j)). Similarly, operators of proposed Class II airports will be allowed two years to comply with ARFF requirements (see proposed § 139.321(b)). While proposed Class II airports already hold an LOAC and are required to provide some type of ARFF coverage, operators of proposed Class II airports still may need additional time to arrange ARFF coverage for small air carrier operations. These certificate holders may need to extend the ARFF coverage already provided for the unscheduled large air carrier aircraft operations or revamp their ARFF services.

Operators of proposed Class II airports would not require additional time to comply with sign requirements. As they currently hold an LAOC, these facilities should already be in compliance with proposed sign requirements.

The FAA recognizes that the coordination, funding, and procurement process associated with the proposed requirements for signs, ARFF, and airport emergency plans may require additional time for implementation at proposed Class III airports. Therefore, the FAA also proposes to allow operators of proposed Class III airports additional time beyond the effective date of the final rule to implement specific requirements, as follows:

1. Signs—3 years (proposed § 139.311(b))
2. ARFF—2 years (proposed § 139.321(b))
3. Airport —Emergency Plan—1 year (proposed § 139.327(j))

Additionally, the FAA proposes to allow 150 days for airport operators currently holding an LAOC that would be recategorized as Class IV airports to convert their current ACS into an ACM (see proposed § 139.101, General requirements). While proposed Class IV airport operators would also have to implement new recordkeeping and personnel training requirements, to a great extent, these certificate holders already comply with recordkeeping and personnel training requirements and would need to document procedures already in place. In such cases, additional time to procure funds and secure contracts for equipment or services would not be necessary. However, the FAA proposes that operators of proposed Class IV airports be allowed an additional year beyond the effective date of the rule to submit an airport emergency plan for FAA approval (see proposed § 139.327, Airport emergency plan).

As the period of time from when a final rule is published to when it is effective could have a significant financial impact on affected airports, the FAA requests comments on possible implementation schedules. The FAA is specifically requesting comments on proposed compliance schedules discussed earlier. Comments and recommendations for alternative compliance dates should be supported by economic and operational statistics.

**Alternatives Considered by the FAA**

As noted previously, this NPRM addresses two issues: (1) the revision of certain requirements of 14 CFR part 139, and (2) certification requirements of airports serving scheduled air carrier operations with 10–30 seat aircraft under 14 CFR part 139. Alternatives for each issue are addressed separately.

*Issue I. Revision of 14 CFR Part 139*

The FAA is proposing to revise current part 139 to clarify and update several requirements to better reflect current industry practices and technology. For the most part, the FAA believes these revisions would only require already certificated airports to take administrative action to document existing operational procedures. The approximately 660 airport operators that currently hold a certificate under part 139 (those operators of airports serving air carrier operations with more than 30 seat aircraft) would be affected by this change.

The FAA considered four alternatives to the revision of 14 CFR part 139. These alternatives would affect all covered airports, including those considered to be small business entities (owned and operated by a municipality with less than 49,999 population). In analyzing these alternatives, the FAA addressed the concerns of airports of varying sizes and operations, including those classified as small business entities:

(1) *Amend administrative and definition sections of 14 CFR part 139 to incorporate airports serving scheduled small air carrier operations into existing certification process; no changes to operational requirements.*

Under this alternative, required operational and safety measures of subpart D would remain unchanged. Only minor language changes to part 139 would be proposed to incorporate a new category of airports. Applicability, definition and administrative sections of the existing rule would be amended to establish airport certification manual (ACM) and other administrative requirements for airports serving scheduled, small air carrier operations.

While this approach would address proposed changes to part 139 applicability section (inclusion of airports serving scheduled, small air carrier operations) and would be the least costly of the alternatives considered, it would not address the problem of out-dated operational requirements. The last major revision of part 139 occurred in November 1987, and since then, industry practices and technology have changed. The FAA believes airport resources would be better spent complying with requirements that reflect current industry practices and technology that help ensure safety.

(2) *In addition to amending administrative and definition sections of 14 CFR part 139, only revise those part 139 operational requirements that the FAA has received a formal request to amend.*

In addition to making administrative changes to part 139 to incorporate airports serving small air carrier aircraft, the FAA could address two requests for an amendment to part 139 operational requirements that require public notification and comment.

Both the NTSB and the Air Transport Association of America (ATA) have formally requested that the FAA amend part 139 emergency response requirements. After the 1990 fuel farm fire at the Stapleton International Airport (Denver, CO), the NTSB recommended that the FAA require holders of airport operating certificates to be responsible for inspecting all fuel storage areas on the airport and have contingency plans for fighting large fires in fuel storage areas. In addition, the ATA petitioned the FAA in 1990 to amend part 139 aircraft rescue and firefighting (ARFF) procedures to require ARFF personnel to be equipped with, and trained in the use of, Federal guidance for emergency response to hazardous materials incidents.

The FAA concurs with both of these recommendations. If this proposal is adopted, the FAA believes these changes would not pose a hardship on existing or newly certificated airports. In many cases, operators of covered airports already ensure that ARFF personnel are supplied with hazardous materials guidance. Further, developing and documenting procedures to ensure an adequate response to large fuel fires would require minimal administrative time for those airport operators that have not already documented such procedures. The FAA believes that these revisions would ensure airport operators comply with these safety practices in a consistent and regular manner.

While this alternative would result in necessary improvements to airport emergency procedures and dispose of outstanding requests for rulemaking, it would not address other needed updates. To ensure safety, the FAA believes that additional revisions are necessary to reflect current operating and safety measures.

(3) *Require only newly certificated airports to comply with proposed amendments to part 139 operational requirements; ''grandfather'' airports currently certificated and allow these facilities to continue to comply with existing operational requirements.*

Under this alternative, operators of airports newly certificated as the result of this rulemaking, and any airport operator that subsequently applies for an airport operating certificate, would be required to comply with all proposed revised operational requirements. This would not be the case for airport operators currently holding an AOC or a LAOC. These airport operators would only need to make a few administrative changes to their ACM or ACS, but would continue to comply with the operational requirements of Subpart D in the same manner as they currently do.

While this approach could be a less costly means of revising part 139, the FAA is opposed to establishing two sets of airport certification standards. The FAA believes that a single set of airport certification standards promotes the consistent application of safety measures and ensures a common and reliable operating environment at all airports. Similar to air traffic control procedures, if pilots and other airport users can come to expect the same facilities, procedures and equipment at every airport at which they operate, then many of the uncertainties and miscommunications that can cause accidents are no longer an issue.

For this reason, the consistent application of specific measures from airport to airport that ensure safety is, and will remain, the primary objective of FAA's airport certification program. To achieve this goal, the FAA will continue to promote a single set of airport certification standards.

(4) *Update part 139 by revising administrative and operational requirements throughout the regulation; both airports that are currently certificated and those newly certificated under part 139 would be required to comply with the revised requirements.*

Of all the alternatives considered for the revision of part 139, this alternative is the most comprehensive. Changes to both administrative and operational requirements would be made throughout the regulation, and all operators of airports certificated under part 139 would be required to comply with the revised regulation. This would ensure a comparable level of safety at all covered airports.

As noted earlier, the last major revision of part 139 occurred in 1987, and since then, industry practices and technology have changed. Under this alternative, revisions would be made throughout the rule to incorporate such changes. In addition, the regulation would be amended to require additional airports to comply with an existing requirement that the FAA has found to be beneficial (for example, the requirement for airport emergency planning).

While this comprehensive approach to the revision of part 139 could be the most costly alternative, granting relief to

smaller airports from certain operational requirements is still possible. Experience gained since the last revision of part 139 also has shown that certain safety measures that have proven successful at larger airports may be cost prohibitive at smaller facilities. Under this alternative, the FAA could propose relief in some instances where an operational requirement would prove to be an economic burden to smaller facilities. For example, the proposed rule could require an emergency plan for all covered airports, but not require that all airport operators conduct a full scale emergency exercise every three years. Instead, the revised rule could require such airport operators to document and review annually established emergency procedures.

In addition to relief from certain operational requirements, compliance costs for smaller airports could be offset by Federal funding for many safety improvements and renovations that would assist these airports in complying with part 139 requirements. Likewise, such airport operators may share costs related to part 139 certification with airport users, *e.g.,* air carriers, and can even choose not to be certificated under part 139. Part 139 is mandatory only if the airport operator chooses to serve air carrier operations.

After considering the alternatives for the revision of part 139, the FAA determined that revising administrative and operational requirements, as discussed in Alternative #4, is necessary to ensure safety in air transportation at certificated airports.

*Issue II. Certification of Airports Serving Scheduled Operations of Air Carrier Aircraft With 10–30 Passenger Seats*

The second component of this proposed rulemaking is the certification of airports that serve scheduled air carrier operations with 10–30 seat aircraft. While all of the proposed changes to part 139 may potentially effect airports serving air carrier operations by small aircraft, the degree of regulatory oversight would depend on the level of operational and safety measures required.

Studies conducted by the GAO, and recent recommendations of the NTSB, urged that the FAA be authorized to regulate airports serving air carriers using aircraft with 10 to 30 seats. This recommendation was not based upon the fact that these airports had a poor safety record (no category of airport has a poor safety record), but rather to provide, to the extent possible, a comparable level of safety at all airports used by air carriers.

With the passage of the Federal Aviation Administration Reauthorization Act of 1996, section 44706, as noted earlier, Congress provided the FAA the necessary authority to certificate airports serving scheduled air carrier operations with 10 to 30 seat aircraft, except in the State of Alaska. This new authority is in addition to existing authority to regulate airports serving air carrier operations using aircraft with more than 30 seats.

FAA's new authority to regulate airports serving smaller air carrier operations requires the agency to identify and consider a reasonable number of regulatory alternatives that are ''least costly, most cost-effective or the least burdensome.'' This must be done before the FAA selects the alternative that will provide a comparable level of safety at airports serving scheduled small air carrier aircraft as provided at currently certificated airports. Using these parameters, the FAA considered the following alternatives:

(1) *Maintain current regulatory oversight of airports serving air carriers operations with more than 30 seat aircraft; no certification requirements for airports only serving small air carrier aircraft.*

Under this alternative, the FAA would continue its current airport certification program under part 139 and would encourage non-certificated airports to voluntarily comply with applicable part 139 safety measures.

Through its airport certification and capital improvement programs, the FAA has established a successful partnership with the airport community. This partnership furthers safety through consistent application of safety measures, and provides a forum to address national safety concerns and priorities. This effort has resulted in development of guidance and standards that are available to all airport operators and for which compliance with is often a condition of Federal grant agreements. Consequently, many airports serving scheduled air carrier operations with 10–30 seat aircraft voluntarily comply with these established guidance and standards.

However, the degree to which non-certificated airports comply still varies. FAA inspections historically have shown that unless a benchmark for safety is set and enforced, inconsistent application of safety measures will occur due to a variety of factors. The most common problem is that many local communities owning and operating existing certificated airports provide the necessary resources to comply with only the mandatory regulatory requirements. Such resources are even harder to come by under a voluntary compliance program.

While maintaining current airport certification criteria might be the least costly course of action, the FAA concurs with GAO and NTSB findings that certification of airports serving smaller air carriers is necessary to provide a comparable level of safety at all airports and ensure safety in air transportation. To achieve this comparable level of safety, the FAA believes it is necessary to create a standard set of requirements for all covered airports.

(2) *Require airports that are currently certificated under part 139 to extend part 139 coverage to air carrier operations with 10–30 seat aircraft; no regulation of airports that serve only 10–30 seat aircraft.*

Many airports currently certificated under part 139 (airports serving air carrier operations with more than 30 seat aircraft) also serve scheduled air carrier operations with 10–30 seat aircraft. Under this option, operators of such airports would continue to meet part 139 requirements as they do today. However, these airport operators also would be required to comply with part 139 requirements during scheduled air carrier operations with 10–30 seat aircraft as well.

At larger airports, required part 139 safety measures are typically applied to all air carrier operations regardless of the number of passenger seats as varying types of air carrier operations occur throughout a 24-hour period. Thus, it is more convenient and economical to comply with part 139 requirements at all times. This is not always the case at smaller airports certificated under part 139. At such airports, large air carrier operations only occur during a certain portion of the day, or on an infrequent basis, and certain part 139 safety requirements are in effect only during these operations. Approximately 225 currently certificated airports fall into this category.

For example, aircraft rescue and firefighting (ARFF) coverage is required to be present on the airport only 15 minutes prior, and 15 minutes after, certain air carrier operations (those with more than 30 seat aircraft). Under this alternative, an airport operator that has arranged for the local fire department to come to its facility once a day to cover its single air carrier operations with more than 30 seat aircraft would have to arrange for additional ARFF coverage for air carrier operations using small aircraft. At airports serving small air carrier operations throughout the day, the frequency of required ARFF coverage may increase dramatically.

While this alternative might be the least costly approach to regulating airports that serve scheduled air carrier operations with 10–30 seat aircraft, it would not cover all airports serving scheduled air carrier operations of 10–30 seat aircraft. This option would only effect airports already certificated under part 139. The approximately 40 airports (excluding airports in Alaska) that currently serve only scheduled air carrier operations with 10–30 seat aircraft would continue to be excluded from part 139 requirements.

The FAA believes that a comparable level of safety and consistent regulatory oversight is necessary at all covered airports serving air carrier operations in small aircraft.

(3) *Extend the scope of part 139 to include all airports that serve scheduled air carrier operations with 10–30 seat aircraft; require airports that only serve scheduled small air carrier operations to comply with standards appropriate to the type of air carrier operation served.*

Part 139 safety and operational requirements can be conceptually divided into two categories-risk reduction requirements and accident mitigation requirements. Most part 139 requirements fall under the risk reduction category, as these requirements are intended to decrease the possibility of an accident by providing a safe and standardized operating environment. Such requirements include, but are not limited to, the marking, lighting, and maintenance of runways and taxiways; removal and marking of hazards in aircraft movement areas; and regular facility inspections.

Conversely, accident mitigation requirements are intended to minimize the consequences of an aircraft accident. Requirements for aircraft rescue and firefighting and emergency planning are examples of accident mitigation requirements that are included in this category. (For a more detailed analysis of each specific risk reduction and accident mitigation standard, see the ''Section-by-Section Analysis'' Section.)

For liability and safety reasons, many operators of airports serving scheduled operations of small air carrier aircraft already have in place risk reduction and accident mitigation measures. These measures have been in place for many years. As noted earlier, risk reduction requirements were developed jointly with the airport community, and are good general airport operating practices (*e.g.,* providing a lighted wind direction indicator or erecting fences to keep the public and wildlife from aircraft movement areas).

Further, airport operators that have accepted Federal funds are required by grant assurance agreements to comply with some of the risk reduction measures required part 139. Of the approximately 40 airports that could be newly certificated under this proposal, all but three have received Federal funds, totaling $178.5 million between 1982–1997. These funds were used for improvements such as runway pavement overlays, rehabilitation of runway and taxiway lighting, and purchase of snow removal equipment.

Even with wide spread compliance, the FAA believes that all covered airports should be required to comply with part 139 risk reduction standards. The FAA believes that due to liability concerns and Federal funding obligations, compliance with part 139 risk reduction standards should not be a hardship on these airport operators. Requiring these airport operators to establish and document how they comply with risk reduction requirements in their ACM will achieve consistency in the daily application of such procedures, and ensure consistency during changes to airport personnel or management.

While requiring operators of airports serving small air carrier aircraft to comply only with risk reduction measures could be a least costly regulatory approach, the FAA believes that some level of accident mitigation still is necessary to achieve a comparable level of safety at all airports. To save passenger lives and property, prevent injury to responding personnel and protect the traveling public from unsafe conditions, the FAA believes that airports serving air carriers should be adequately prepared to respond to aircraft accidents and other airport-specific emergencies.

Since accident mitigation costs could have a significant economic effect on airports serving small air carrier aircraft, the FAA considered not requiring such measures. Certain equipment (such as ARFF trucks and buildings) used to comply with accident mitigation standards is eligible for Federal funds. However, operating costs such as personnel and maintenance would not be eligible for these funds. Consequently, accident mitigation standards could be the most costly for smaller airports. This is particularly true if ARFF coverage requires equipment and personnel to be on-site and in a ''ready'' status for more than an occasional air carrier operation.

However, aircraft accidents present many unique circumstances that a community's regular emergency response may not be prepared for, and given some remote locations of airports, may not be able to respond to in a reasonable time frame. Aircraft fuel fires burn more intensively and quickly than other fires, and require specialized training, equipment and extinguishing agents that may not always be provided by a local fire department. Such incidents also may require emergency responders to be prepared for a large number of casualties and possible hazardous cargo.

While this alternative promotes a minimum level of safety through consistent compliance with risk reduction requirements, the FAA believes that not all communities would place enough emphasis on accident mitigation measures to ensure safety in air transportation at all covered airports and that further measures are needed.

(4) *Amend part 139 to require all airports, regardless of size of air carrier aircraft and frequency of service, to comply with all required risk reduction and accident mitigation standards.*

Of all the alternatives considered for certification of airports serving small air carrier aircraft, this approach is the most comprehensive. It would require all operators of airports certificated under part 139 (both currently and newly certificated) to comply with both proposed risk reduction and accident mitigation requirements. Accident mitigation requirements would include airport emergency planning and ARFF services.

As noted in the discussion of Issue I above, analysis of possible regulatory alternatives for the certification of airports serving small air carrier aircraft concluded that there exists a need to require at least some minimum level of both risk reduction and accident mitigation measures. Without such measures, a comparable level of safety at all airports cannot be achieved.

However, the FAA recognizes the need to provide some flexibility in the implementation of certain safety measures at airports with infrequent air carrier service or where local resources are severely limited. Smaller communities do not always have the resources to provide the same level of services at their airports as airports in large metropolitan areas without adversely affecting other community services and infrastructure.

To address such cost issues, the FAA could exercise its statutory authority to exempt certain airports from some prescribed ARFF requirements. Under statutory authority, the FAA ensures that certificated airports provide for the operation and maintenance of adequate safety equipment, including firefighting and rescue equipment capable of rapid

access to any part of the airport used for landing, takeoff, or surface maneuvering of an aircraft. If the FAA determines that this would not be in the public's interest, relief from aircraft rescue and firefighting requirements would be granted if:

- A certificated airport has less than one-quarter of one percent of the total number of passenger boardings each year at all certificated airports; and
- The FAA decides ARFF requirements would be unreasonably costly, burdensome, or impractical.

In 1997, one-quarter of one percent of the total number of passenger boardings, or enplanements, equaled 1.55 million annual enplanements. The majority of currently certificated airports and all other airports serving scheduled air carrier operations meet this part of the criterion. Likewise, operators of airports serving small air carrier aircraft that are not currently certificated under part 139 also meet this criterion (only 70 of the largest certificated airports have annual enplanement numbers in excess of 1.55 million annually).

Through the statutory exemption, the FAA would maintain the necessary oversight of ARFF while ensuring that ARFF requirements are appropriate for the airport size and type of air carrier operations. This would not be a blanket exemption for airports with infrequent or smaller air carrier operations nor would it relieve an airport from the obligation to provide some level of ARFF coverage, but would be decided on a case-by-case basis. All certificated airports would be required to provide some level of ARFF service. For example, the FAA might approve a five-minute response time (versus the three-minute response required under part 139) at a limited certificated airport where unscheduled air carrier operations are infrequent and the community has arranged for an off-airport fire station to provide ARFF coverage.

Airport operators holding limited certificates (airports that serve unscheduled air carrier operation with more than 30 seat aircraft) currently comply with ARFF requirements similar to what is proposed under this alternative. Existing part 139 requires limited certificated airports to provide for ARFF and does not specify ARFF standards. Typically, these airports are served infrequently by unscheduled air carrier flights, and the FAA allows some flexibility in the level of ARFF coverage provided. In establishing ARFF coverage at such airports, the FAA uses part 139 ARFF standards as a benchmark, and allows deviation from the requirements if the airport operator can demonstrates a comparable level of safety.

For these reasons, this proposal includes procedures for an airport to request relief from part 139 ARFF requirements if the airport can provide an acceptable alternate means of compliance. Some relief from airport emergency plan requirements could be provided as well. For example, airports serving scheduled large air carrier operations are required to conduct an emergency disaster drill every three years. Under this alternative, this requirement would not be proposed for other covered airports. Instead, these airports would be required to review their plans annually to ensure information contained in the plan is accurate.

After considering the alternatives for the certification of airports serving smaller air carrier operations, the FAA is proposing to amend part 139 to require that all airports, regardless of size and type of air carrier operations, comply with risk reduction and accident mitigation measures necessary to ensure safety in air transportation. However, to achieve a comparable level of safety at airports that vary greatly in size and operations, the FAA proposes to permit alternative means of compliance with certain accident mitigation requirements. This will allow the most cost effective and flexible method of ensuring safety to be employed at all covered airports.

For more detailed cost analyses of these alternatives, see the ''Regulatory Evaluation'' section below.

**Paperwork Reduction Act**

This proposal contains the following new information collection requirements subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The title, description, and number of respondents, frequency of the collection, and estimate of the annual total reporting and recordkeeping burden are shown below.

*Title:* Certification of Airports

*Summary:* The FAA proposes to revise current part 139 and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10–30 seats.

In 1996, the statue that authorizes the FAA to certificate airports was amended to include a new category of covered airports (those with airports serving scheduled operations of air carrier aircraft with 10–30 passenger seats). The FAA proposes to use this new authority and certificate all airport operators allowed by law.

Further, this proposal would revise and clarify several safety and operational requirements. The last major revision of part 139 occurred in November 1987, and since then, industry practices and technology have changed. In the subsequent years, the FAA has gathered data on the effectiveness of part 139 requirements, (primarily through joint industry/FAA working groups, field research and periodic airport certification inspections), and proposes to use this rulemaking opportunity to update part 139 requirements. Changes also are proposed to address National Transportation Safety Board (NTSB) recommendations and petitions for exemption and rulemaking.

These proposed revisions are necessary to ensure safety in air transportation and to provide a comparable level of safety at all certificated airports.

*Use of:* This information is necessary to allow the FAA to verify compliance with proposed part 139 safety and operational requirements. While many part 139 reporting and recordkeeping requirements remain substantially unchanged, the FAA is proposing additional information collections.

Under existing part 139, the FAA requires airports to comply with certain safety requirements prior to serving operations of large air carrier aircraft (aircraft with more than 30 seats). When an airport satisfactorily complies with these requirements, the FAA issues to that facility an airport operating certificate (AOC) that permits an airport to serve large air carriers. The FAA periodically inspects these airports to ensure continued compliance with part 139 safety requirements, including the maintenance of specified records. Both the application for an AOC and annual compliance inspections require regulated airport operators to collect and report certain operational information.

Specifically, operators of certificated airports are required to develop and comply with an FAA-approved Airport Certification Manual (ACM). This manual details how an airport will comply with the requirements of part 139, and includes other instructions and procedures to help assist airport personnel perform their duties and responsibilities. Under this proposal, the FAA would continue to require all operators of certificated airports to have an ACM.

The AOC remains in effect as long as the need exists and the operator complies with the terms of the AOC and the ACM. Certain changes in the operation of the airport must be

reported to the FAA for information or approval. If the airport operator believes that an exemption is needed to commence airport operations, justification for, and FAA approval of, the exemption is required for issuance of the AOC. The operator may request FAA approval of changes to the AOC or ACM, or an exemption from part 139 requirements, by submitting justification and documentation. Also, the FAA Administrator may propose changes to the AOC or ACM and the airport operator may submit contrary evidence of argument concerning the proposed changes.

*Respondents (including number of):* The likely respondents to this proposed information request are those civilian U.S. airport certificate holders who operate airports that serve scheduled and unscheduled operations of air carrier aircraft with more than 30 passenger seats and scheduled operations of air carrier aircraft with 10–30 passenger seats. The FAA estimates that 606 airports serve this type of air carrier operations, of which an estimated 565 already hold an AOC and comply with most of the proposed information collection requirements.

*Frequency:* The frequency of collection would vary depending on the type of information collected, the size of the respondent's airport, and type of air carrier operations served. Information needed for the application for an AOC would be collected only at the time the application is submitted. An airport operator applying for an AOC would be required to develop an ACM. This document would be periodically updated and such changes would have to be reported to the FAA. Further, airport certificate holders would be required to establish and maintain specific records such as personnel training and facility inspections.

*Annual Burden Estimate:* This proposal would constitute a recordkeeping and reporting burden for operators of airports certificated under part 139. This proposal would require such airport operators to develop and maintain an ACM, report ACM amendments to the FAA, and record personnel training and facility inspections. In addition, those airports applying for an AOC would be required to file an application.

The following table lists estimated initial and annual hours respondents would need to comply with proposed part 139 reporting and recordkeeping requirements:

| Proposed part 139 sections | Initial reporting hours | Initial recordkeeping hours | Annual reporting hours | Annual recordkeeping hours |
|---|---|---|---|---|
| 139.103 | 304 | 0 | 16 | 0 |
| 139.111 | 0 | 0 | 32 | 0 |
| 139.113 | 0 | 0 | 5 | 0 |
| 139.201 | 0 | 0 | 608 | 608 |
| 139.203 | 1,520 | 0 | 0 | 0 |
| 139.205 | 11,248 | 0 | 1,216 | 0 |
| 139.301 | 0 | 27 | 0 | 324 |
| 139.303 | 0 | 4,848 | 0 | 13,909 |
| 139.313 | 2,208 | 0 | 0 | 736 |
| 139.317 | 0 | 0 | 0 | 2,090 |
| 139.319 | 0 | 912 | 0 | 570 |
| 139.321 | 552 | 0 | 80 | 0 |
| 139.323 | 0 | 574 | 0 | 2,404 |
| 139.327 | 0 | 6,920 | 0 | 4,152 |
| 139.329 | 0 | 2,528 | 0 | 16,432 |
| 139.331 | 0 | 12,640 | 0 | 790 |
| 139.339 | 0 | 0 | 32 | 4,816 |
| 139.341 | 0 | 79 | 0 | 3,950 |
| Subtotal | 15,832 | 28,528 | 1,989 | 50,781 |
| Total | 44,360 | | 52,770 | |

Operations/maintenance labor accounts for an estimated 70 percent of the hours listed in the table above, and clerical labor makes up the other 30 percent. Cost per hour is estimated to be $26 for operations/maintenance labor and $14 for clerical labor. Other expenses such as general and administrative costs, overhead costs, and other indirect costs are estimated to amount to approximately 15 percent of the direct labor costs. The estimate of the total initial reporting and recordkeeping burden would be $1,142,713. The annual reporting and recordkeeping burden would be $1,359,355.

The agency is soliciting comments to (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submission of responses).

Individuals and organizations may submit comments on the information collection requirement by September 19, 2000, to the address listed in the **ADDRESSES** section of this document.

Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number. The burden associated with this proposal has been submitted to OMB for review. The FAA will publish a notice in the **Federal Register** notifying the public of the approval number.

**Compatibility With ICAO Standards**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards

and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

The Joint Aviation Authorities, an associated body of the European Civil Aviation Conference, develop Joint Aviation Requirements (JAR) in aircraft design, manufacture, maintenance, and operations for adoption by participating member civil aviation authorities. The JAR does not address airport certification.

**Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, Federalism Implications, and Unfunded Mandates Assessment**

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended, requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. And fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA has determined that the economic impact of this proposed rule will generate benefits that justify its costs and does meet the standards for a ''significant regulatory action'' as defined in the Executive Order and is significant as defined by the Department of Transportation's Regulatory Policies and Procedures. The proposal, therefore, is subject to review by the Office of Management and Budget. The FAA has determined that this rule will not constitute a barrier to international trade; and does not contain a significant intergovernmental or private sector mandate. The agency has concluded that the proposed rule would have a significant impact on a substantial number of small entities and has prepared an initial regulatory flexibility analysis. These analyses, available in the docket, are summarized below.

The FAA invites the public to provide comments and supporting data on the assumptions made in this evaluation. All comments received will be considered in taking final action on this notice.

**Benefits**

The expected benefit of this proposed rule is an enhanced level of safety resulting in reduced fatalities, injuries, and property damage at airports with scheduled air carrier operations, particularly operations in aircraft configured with 10 to 30 passenger seats.

In 1995, the FAA issued regulations aimed at ensuring safety in scheduled air carrier operations in aircraft with 10 or more passenger seats. Since then, Congress has authorized the FAA to regulate airports serving 10 to 30 seat aircraft to further help ensure safety at airports certificated by the FAA. The FAA is now proposing to establish standards for these airports. The agency will make these standards sufficiently flexible to accommodate existing conditions at each airport, while providing maximum possible safety improvements.

This proposal affects all currently certificated airports and approximately 38 additional airports that would need to obtain certificates. Accordingly, benefits are expected to accrue at all four proposed classes of certificated airports. Several different types of safety improvements are expected. These involve:

(1) Prevention of runway accidents or collisions because of inadequate signs and traffic and wind direction indicators,

(2) Mitigation of accident damages by improving runway safety areas at certain airports,

(3) Mitigation of accidents as a result of increased requirements for ARFF services,

(4) Prevention and mitigation of fires at airport fuel farms,

(5) Prevention and mitigation of runway accidents caused by snow and ice accumulation, and

(6) Prevention and mitigation of wildlife problems as a result of improved procedures for wildlife hazard management.

Airport accidents involving aircraft used in commercial operations are rare and random events. This was particularly true of small air carrier aircraft, in large part, because small aircraft serve a small portion of commercial air passenger activity. However, small air carrier aircraft activity is growing and is projected to continue to grow at much higher rates than major airline activity. For example, small air carrier revenue passenger miles are projected to increase an average of 7.5 percent per year compared to 4 percent for major airlines. As a result, prior history may not be predictive of the future. If provisions of the rule prevent or mitigate the consequences of one catastrophic accident involving an aircraft with 30 seats, the potential benefit of lives saved and property damage avoided is as much as $45 million. If the provisions of the rule prevents or mitigate an accident associated with the collision of two such aircraft, the benefit would double to as much as $90 million. Potential safety improvements are not limited to situations involving small air carrier aircraft, but encompass larger aircraft that also use smaller airports.

A brief discussion of benefits is included below. A more full discussion is contained in the full regulatory evaluation in the docket.

*Markings, Signs, and Traffic and Wind Indicators*

Increased safety would result from proposed uniform standards for installation of runway and taxiway markings, signs, and lighting, and for traffic and wind direction indicators. All classes of certificated airports would need to comply with these requirements. Although most airports affected by the rule currently meet these standards, a few airports (approximately 9) would need to upgrade certain requirements. The FAA believes uniform standards will make a significant contribution to safety. If pilots and other airport users can come to expect the same facilities, procedures, and equipment at every airport at which they operate, then many of the uncertainties and miscommunications that can cause accidents are no longer an issue.

*Runway Safety Areas*

A second example of a safety benefit expected as a result of this proposal relates to runway safety areas. On May 8, 1999, a SAAB 340 overran a runway at New York's John F. Kennedy International Airport. The airport had recently installed arresting material in compliance with part 139 safety area requirements that resulted in the airplane stopping 50 feet short of Thurston Bay. The incident resulted in very little damage to the aircraft and one minor passenger injury. A previous incident on the same runway in 1984, before the arresting material was

installed, resulted in an SAS DC–10 running into the bay. The incident resulted in passenger injuries and extensive airplane damage.

This proposal would require that Class III airports meet safety area requirements for the first time. The FAA has encouraged these airports to install safety areas for over 10 years, and many airports have already done so. Although the proposal will not require immediate installation of these safety facilities at any class of airports, over time, the eventual installation of safety areas at certificated airports will result in safer airports.

*Emergency Response Services and Equipment*

A major safety provision of the proposal requires the availability of some kind of emergency response services and equipment, including aircraft rescue and firefighting (ARFF) equipment. The service must be available during every landing and takeoff of scheduled air carrier aircraft with 10 to 30 seats. In some cases, this service may not currently be available for small aircraft operations at airports where such service is provided for larger aircraft. For example, an accident that occurred at Quincy, Illinois (a proposed Category II airport) on November 19, 1996 might have been mitigated had ARFF been standing by during the arrival of the small air carrier aircraft.

The U.S. air carrier transportation system is very safe, and accidents requiring emergency response action are rare. The risk of death or injury to a passenger, due in part to current emergency response requirements, is very small; however, many incidents have occurred where the perceived risk of an accident was great enough that ARFF units were alerted. The FAA has tracked airport incidents at currently certificated airports, and notes that over 1,200 such occurrences took place during an 18-month period.

These incidents usually involved large aircraft and occurred at airports where emergency response services and equipment were available. Nevertheless, the FAA has no reason to believe that small aircraft operations are safer than large aircraft operations, and concludes that a proportionate number of similar incidents occur when and where ARFF is not available. Thus, the provision of emergency response capability at all certificated airports, as proposed, is necessary to ensure safety in air commerce.

*Fuel Storage Fires*

Another expected benefit is prevention/mitigation of fuel storage fires. The proposed rule requires all classes of airports to address fuel storage fires in their disaster plans. This will better prepare airports to prevent and/or extinguish the kind of fire that occurred at Stapleton International Airport, Denver, Colorado, on November 25, 1990. That fire erupted on a fuel farm about 1.8 mile from the main terminal and burned for 48 hours, destroying about 3 million gallons of fuel. Flight operations of a major air carrier were disrupted due to a lack of fuel, and the carrier estimated total damage to have reached between $15 and $20 million.

The National Transportation Safety Board (NTSB) concluded that the City and County of Denver (the airport certificate holder) and the fire department, in particular, apparently had not considered the possibility of a fire of this type since no procedures or contingency plans were in place. The FAA has determined that contingency plans that cover the possibility of a major fuel farm fire could result in similar fires being extinguished much sooner, and perhaps resulting in considerably less damage.

*Snow and Ice Control*

A safety benefit is expected from improved snow and ice control, which would reduce the potential for snow and ice related accidents. On March 17, 1993, a BAC–BA-Jetstream 3101 was making a night instrument approach to a proposed Class II airport. Because the runway was not properly plowed, and berms of snow concealed the runway lights at ground level, the captain lost control after touchdown, and the airplane sustained substantial damage.

This proposed rule would require Class II and III airports to develop snow and ice control plans. Although these proposed classes of airports already have procedures for snow and ice removal, this proposal would formalize consistent plans across all airports with scheduled air carrier services. The FAA concludes that this low-cost requirement to standardize response to snow and ice at certificated airports would significantly help prevent the kind of accident discussed above.

*Wildlife Hazard Management*

Finally, benefits are expected at all classes of certificated airports as a result of proposed actions to reduce wildlife hazards (bird strikes and other damaging collisions with wildlife). A FAA study of civil aircraft wildlife strikes in the U.S. (''Wildlife Strikes to Civil Aircraft in the United States, 1991–1997'') found a significant and growing hazard of wildlife strikes with aircraft in the vicinity of airports. The study determined that 97 percent of all wildlife strikes occur while arriving or departing from an airport. The number of annual strikes increased 53 percent from 1991 to 1997, and, according to the FAA report, is now causing about $237 million per year in direct costs.

The expected benefit is that wildlife strikes would be reduced. Some operators of proposed Class II and III airports would be required to conduct wildlife hazard assessments, as well as formulate and implement wildlife hazard management plans for their airports. Ultimately, the rule is expected to reduce the number of strikes that would otherwise occur.

The FAA report estimates that wildlife strikes, at the present time, result in 501,560 hours per year of aircraft down time.

**Costs**

Some of the requirements of this proposal that will impose costs, such as improved snow and ice control, marking signing and lighting, and wildlife hazard management are intended to prevent accidents. Other requirements, such as emergency planning and improved emergency response capability are intended to mitigate accidents should they occur.

The major items of this rule that are expected to impose costs are summarized below:

| Major cost items | Initial/Capital costs | Annual recurring costs |
|---|---|---|
| Risk Reduction Items (Subpart D–Operations—Records); Personnel; Marking; Signs and Lighting; Snow & Ice Control; Handling & Storing of Hazardous Substances & Materials; Traffic & Wind Direction Indicators; Self-Inspection Program; Ground Vehicles; Wildlife Hazard Management) | $1,273,024 | $1,429,382 |
| Mitigation Items (ARFF, Airport Emergency Plan) | 2,247,928 | 4,600,918 |
| Program total—current dollars | 3,520,952 | 6,030,300 |

The FAA estimates that the present value of the 10-year cost of this proposed rule is about $46 million.

A more detailed description of how these costs were estimated is contained in the full regulatory evaluation.

This estimate is likely to be high because it is based on assumed average costs across all airports in each proposed class. In the application of this rule, each airport (particularly Class III airports) may have already complied with this rule, or may receive relief from certain aspects of this rule under the proposed exemption provisions.

**Benefit-Cost Comparison**

Although the FAA did not quantify the benefits of this proposal, some useful observations can be made. First, a single accident could easily equal, or double the estimated total cost of this proposal. A single accident involving a 30-seat airplane with an industry standard load factor could result in as much as a loss of $45 million (with the value of a fatality avoided valued at $2.7 million). For example, the accident at the Quincy airport is estimated to have cost as much as $40 million. Costs escalate quickly with each additional aircraft involved. In addition the proposed rule is expected to mitigate fuel storage fires, wildlife strikes, runway incursions, and snow/ice related accidents.

The FAA has determined that numerous safety benefits would occur from the provisions in the proposed rule. One of these benefits is the expected mitigation of an accident similar to the one at the Quincy airport where fatalities might have been avoided. The FAA proposes requirements that could reduce the potential for reoccurrence of conditions that resulted in the accident at Quincy Airport. In view of the moderate costs and potential benefits expected from this proposal, the FAA concludes that this proposal is cost-justified.

**Initial Regulatory Flexibility Determination**

The Regulatory Flexibility Act of 1980 establishes, ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify, and a regulatory flexibility analysis (RFA) is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. If the action will have a significant impact on a substantial number of small entities, the agency must prepare an RFA as described in the Act.

As mentioned earlier, the FAA has determined that this action would have a significant impact on a substantial number of small entities. The FAA has prepared an RFA in the Regulatory Evaluation, a copy of which has been placed in the docket for this rulemaking action. A summary of this analysis follows.

*Affected Industries*

As noted above, the FAA must attempt to minimize the potential economic impact of the proposed rule on small entities, and meet the agency's primary responsibility for aviation safety. The proposal would affect a total of 601 airports, of which an estimated 217 airports (36 percent) are small entities.

**Description of Alternatives**

The Regulatory Flexibility Act requires the FAA to consider the advantages and disadvantages of alternatives to this proposed rulemaking. The FAA has considered several alternative approaches to this proposed rulemaking and has attempted to minimize the potential economic impact of the proposal; especially the impact on small entities. In addition, this action fulfills the FAA's responsibility to respond to the authority provided by Congress to certificate airports serving scheduled air carrier operations with 10–30 seat aircraft, except for the State of Alaska.

The FAA, in this NPRM, considered alternatives based on two issues. Issue I was the revision of 14 CFR part 139, and Issue II was the certification of airports serving scheduled operations of small air carrier aircraft with 10–30 passenger seats. The FAA determined that it was necessary to revise 14 CFR part 139 and that the revised part 139 should include the certification of airports serving scheduled air carrier operations with 10–30 passenger seat aircraft.

For Issue I, the revision of part 139, the four alternatives considered were:

*Alternative 1:* Amend administrative and definition sections of 14 CFR part 139 to incorporate airports serving scheduled air carrier operations into existing certification process; no changes to operational requirements.

The estimated total incremental costs of Alternative 1 would be approximately $42,000 for one-time costs and $46,000 for recurring costs.

*Alternative 2:* In addition to amending administrative and definition sections of part 139, only revise those part 139 operational requirements that the FAA has received a formal request to amend.

The estimated total incremental costs of Alternative 2 would be approximately $57,000 for one-time costs and $64,000 for recurring costs.

*Alternative 3:* Require only newly certificated airports to comply with proposed amendments to part 139 operational requirements; ''grandfather'' airports currently certificated and allow these facilities to continue to comply with existing operational requirements.

The estimated total incremental costs of Alternative 3 would be approximately $1,552,000 for one-time costs and $1,250,000 for recurring costs.

*Alternative 4:* Update part 139 by revising administrative and operational requirements throughout the regulation; both airports that are currently certificated and those newly certificated under part 139 would be required to comply with the revised regulations.

The estimated total incremental costs of Alternative 4 would be approximately $3,521,000 for one-time costs and $6,030,000 for recurring costs. This is the alternative selected by the FAA.

For Issue II, the certification of airports serving scheduled air carrier operations with 10–30 passenger seat aircraft, the four alternatives considered were:

*Alternative 1:* Maintain current regulatory oversight of airports serving air carrier operations with more than 30 seat aircraft; no certification requirements for airports only serving smaller air carrier aircraft.

Alternative 1 maintains the current airport certification system. Therefore, there are no incremental costs for Alternative 1.

*Alternative 2:* Require airports that are currently certificated under part 139 to extend part 139 coverage to air carrier operations with 10–30 seat aircraft; no regulation of airports that serve only 10–30 seat aircraft.

The estimated total incremental costs of Alternative 2 would be approximately $900,000 for one-time costs and $3,574,000 for recurring costs.

*Alternative 3:* Extend the scope of part 139 to include all airports that serve scheduled air carrier operations with 10–30 seat aircraft; require airports that only serve scheduled small air carrier operations to comply with fewer standards than those airports serving large air carrier operations.

The estimated total incremental costs of Alternative 3 would be approximately $2,284,000 for one-time costs and $5,058,000 for recurring costs.

*Alternative 4:* Amend part 139 to require all airports, regardless of size of air carrier aircraft and frequency of service, to comply with all required risk reduction and accident mitigation standards.

The estimated total incremental costs of Alternative 4 would be approximately $3,521,000 for one-time costs and $6,030,300 for recurring costs. This is the alternative selected by the FAA.

*Compliance Assistance*

The FAA's policy and procedures related to small entities meets and exceeds the requirements of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). FAA's regional offices regularly provide guidance and support in compliance matters to operators of airports classified as small entities. The guidance and support may occur via the telephone, e-mail, conventional mail, regional newsletters and FAA participation in industry conferences. In addition, it has been a long standing policy of the FAA to develop and distribute, free of charge, advisory circulars, informational brochures, and safety placards that are intended to assist the certificate holder in complying with the requirements of part 139. If this rule is adopted, the FAA will prepare a small entity compliance guide for the revised part 139. Also, existing FAA policy concerning enforcement of this regulation, and any subsequently adopted regulation, will continue to consider small entities status in obtaining compliance.

*Affordability Analysis*

The proposed rule was analyzed to determine its affordability. Many airports already meet the requirements of the proposed rule. These airports would incur only minor incremental costs as a result of the proposed rule.

The remaining airports meet most of the requirements of the proposed rule. These airports may be able to meet the requirements of the proposed rule with the purchase of additional equipment, coordination with air carriers to revise airline flight schedules, and increased use of airport staff for collateral duties.

As noted earlier, Federal funds that can be requested only cover capital items such as ARFF equipment, runway marking and lighting, and fencing. Federal funds cannot be used to cover the costs of maintenance and operation expenses or the cost of personnel.

Although many airports already meet all or most of the standards of the proposed rule, there would be some airports that may have difficulty in financing the improvements needed to meet the requirements of the proposed rule. Airports may request relief from certain requirements, although it may not be granted. Further, if an airport enplanes less than one-quarter of one percent of the passengers at all certificated airports, the airport operator may apply for an exemption from the ARFF requirements of the proposed rule. It is anticipated that in all requests for exemptions that the FAA would work with each airport individually to find a mutually agreeable solution. For the reasons discussed earlier, the proposed rule is expected to be affordable to all airports.

*Business Closure Analysis*

The possibility of business failures being caused by the proposed rule was analyzed. None of the airports covered by this rule are expected to close as a result of this rule. All of these airports accommodate general aviation aircraft, as well as air carrier aircraft. Even if these airports lose their air carrier service they would likely remain open to provide service to general aviation aircraft. However, the FAA does not intend to cause an airport to suspend scheduled air service to the community. As presented above, a certificate holder may request relief from requirements that might effect the airport's scheduled air service. For example, the FAA has the authority to exempt from ARFF requirements airports with less than one-quarter of one percent (0.025 percent) of annual U.S. enplanements.

*Disproportionality Analysis*

The proposed rule was analyzed to determine if it would have a disproportional effect on smaller entities. The FAA determined that the impact of the proposed rule on the smaller entities would be relatively higher than the impact on the larger entities because the smaller entities may require relatively greater efforts to comply. If this is the case, the smaller entity may incur proportionally higher costs than the larger entity. The FAA has determined that disproportionate costs are justified to achieve uniform standards that enhance safety. The FAA will exercise its authority to consider petitions for exemption that may minimize a disproportionate impact.

*International Trade Impact Assessment*

The provisions of this rule will have little or no impact on trade for U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

**Federalism Implications**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. Most airports subject to this rule are owned, operated, or regulated by a local governmental body (such as a city or county government), which, in turn, is either incorporated by or part of a State. In a few cases, the airports are operated directly by the states. This rule would have minimal direct effect on the States, and would not alter the relationship between the airport certificate holders and the FAA that is established by law. The annual costs of compliance with this rule would be very low compared with the resources available to the airports. Further, before issuing this NPRM, the FAA consulted with representatives of the airports through the Aviation Rulemaking Advisory Committee, as well as the states through various national associations of state and local governments. Also, FAA will mail to each state government a copy of the NPRM specifically inviting comment on this proposal.

Accordingly, the FAA has determined that this action 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, the FAA has determined that this rulemaking does not have federalism implications.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532–1538) requires the FAA to assess the effects of Federal regulatory actions on state, local, and tribal governments, and on the private sector of proposed rules that contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year. This action does not contain such a mandate.

Because many airports are owned by small governments, this proposed rule could affect a large number of small governments. To provide notice to the

small governments affected by this proposed rule, a copy of the NPRM will be sent to each State's Aeronautics Authority. This will provide small governments the opportunity to comment on the proposed rule before it would be implemented.

**Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

**Energy Impact**

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

**List of Subjects**

*14 CFR Part 121*

Air carriers, Aircraft, Aviation safety, Charter flights, Safety, Transportation.

*14 CFR Part 139*

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

**The Proposed Amendments**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

## PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

2. Revise § 121.590 to read as follows.

**§ 121.590 Use of certificated land airports.**

(a) Except as provided in paragraph (b) of this section, or unless authorized by the Administrator, no air carrier, and no pilot being used by an air carrier may, in the conduct of operations governed by this part, operate an airplane into a land airport in any State of the United States, the District of Columbia, or any territory or possession of the United States, unless that airport is certificated under part 139 of this chapter. Further, no air carrier may operate an airplane at such a certificated airport, unless that operation is authorized for the classification of the airport under part 139 of this chapter. However, an air carrier may designate and use as a required alternate airport for departure or destination, an airport that is not certificated under part 139 of this chapter.

(b) An air carrier or a commercial operator may use an airport not certificated under part 139 of this chapter if conducting domestic, flag, and passenger-carrying supplemental operations at any airport operated by the United States government; and the airport meets the equivalent safety standards of those required under part 139 of this chapter.

(c) An air carrier or a commercial operator may use an airport not certificated under part 139 of this chapter if conducting domestic and flag operations with turbojet powered airplanes designed for fewer than 10 passenger seats; or domestic and flag operations with airplanes designed for more than 9 and fewer than 31 passenger seats within the State of Alaska, if:

(1) The airport is adequate for the proposed operation, considering such items as size, surface, obstructions, and lighting.

(2) For an airplane carrying passengers at night, the pilot may not take off from, or land at, an airport unless—

(i) The pilot has determined the wind direction from an illuminated wind direction indicator or local ground communications or, in the case of takeoff, that pilot's personal observations; and

(ii) The limits of the area to be used for landing or takeoff are clearly shown by boundary or runway marker lights. If the area to be used for takeoff or landing is marked by flare pots or lanterns, their use must be authorized by the Administrator.

3. Revise part 139 to read as follows:

## PART 139—CERTIFICATION OF AIRPORTS

### Subpart A—General

Sec.
139.1 Applicability.
139.3 Delegation of authority.
139.5 Definitions.
139.7 Methods and procedures for compliance.

**Subpart B—Certification**

139.101 General requirements.
139.103 Application for certificate.
139.105 Inspection authority.
139.107 Issuance of certificate.
139.109 Duration of certificate.
139.111 Exemptions.
139.113 Deviations.

**Subpart C—Airport Certification Manual**

139.201 General requirements.
139.203 Contents of airport certification manual.
139.205 Amendment of airport certification manual.

**Subpart D—Operations**

139.301 Records.
139.303 Personnel.
139.305 Paved areas.
139.307 Unpaved areas.
139.309 Safety areas.
139.311 Marking, signs, and lighting.
139.313 Snow and ice control.
139.315 Aircraft rescue and firefighting: Index determination.
139.317 Aircraft rescue and firefighting: Equipment and agents.
139.319 Aircraft rescue and firefighting: Operational requirements.
139.321 Aircraft rescue and firefighting: Exemptions.
139.323 Handling and storing of hazardous substances and materials.
139.325 Traffic and wind direction indicators.
139.327 Airport emergency plan.
139.329 Self-inspection program.
139.331 Ground vehicles.
139.333 Obstructions.
139.335 Protection of navaids.
139.337 Public protection.
139.339 Wildlife hazard management.
139.341 Airport condition reporting.
139.343 Identifying, marking, and reporting construction and other unserviceable areas.
139.345 Noncomplying conditions.

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44706, 44709, 44719.

### Subpart A—General

**§ 139.1 Applicability.**

(a) This part prescribes rules governing the certification and operation of airports in any State of the United States, the District of Columbia, or any territory or possession of the United States serving any—

(1) Scheduled passenger-carrying operations of air carrier aircraft designed for more than 9 passengers, as determined by the aircraft type certificate issued by a competent civil aviation authority; and

(2) Unscheduled passenger-carrying operations of air carrier aircraft designed for more than 30 passengers, as determined by the aircraft type certificate issued by a competent civil aviation authority.

(b) This part does not apply to—

(1) Airports serving scheduled air carrier operations only by reason of being designated as an alternate airport;

(2) Airports operated by the United States;

(3) Airports located in the State of Alaska that only serve scheduled operations of small air carrier aircraft, and do not serve scheduled or unscheduled operations of large air carrier aircraft; or

(4) Heliports.

**§ 139.3 Delegation of authority.**

The authority of the Administrator under 49 U.S.C. 44706 to issue, revoke, and deny airport operating certificates is delegated to:

(a) The Associate Administrator for Airports, Director of Airport Safety and Standards, and Regional Airports Division Managers; and

(b) Each Airport Certification Safety Inspector, to the extent necessary to—

(1) Conduct inspections to determine compliance with the requirements of this part;

(2) Authorize exemptions and deviations from any requirement of this part;

(3) Approve or amend airport certification manuals required under this part; and

(4) Approve or disapprove standards, methods and procedures used to comply with this part.

**§ 139.5 Definitions.**

The following are definitions of terms as used in this part:

*AFFF* means aqueous film forming foam agent.

*Air carrier operation* means the takeoff or landing of an air carrier aircraft and includes the period of time from 15 minutes before and until 15 minutes after the takeoff or landing.

*Airport* means an area of land or other hard surface, excluding water, that is used or intended to be used for the landing and takeoff of aircraft, including any buildings and facilities.

*Airport operating certificate* means a certificate, issued under this part, for operation of a Class I, II, III, or IV airport.

*Average daily departures* means the average number of scheduled departures per day of air carrier aircraft computed on the basis of the busiest 3 consecutive calendar months of the immediately preceding 12 consecutive calendar months; except that if the average daily departures are expected to increase, then ''average daily departures'' may be determined by planned rather than current activity, in a manner authorized by the Administrator.

*Certificate holder* means the holder of an airport operating certificate issued under this part.

*Heliport* means an airport, or an area of an airport, used or intended to be used for the landing and takeoff of helicopters.

*Class I airport* means an airport certificated to serve scheduled operations of large air carrier aircraft that can also serve unscheduled passenger operations of large air carrier aircraft and/or scheduled operations of small air carrier aircraft.

*Class II airport* means an airport certificated to serve scheduled operations of small air carrier aircraft and the unscheduled passenger operations of large air carrier aircraft. A Class II airport cannot serve scheduled large air carrier aircraft.

*Class III airport* means an airport certificated to serve scheduled operations of small air carrier aircraft. A Class III airport cannot serve scheduled or unscheduled large air carrier aircraft.

*Class IV airport* means an airport certificated to serve unscheduled passenger operations of large air carrier aircraft. A Class IV airport cannot serve scheduled large or small air carrier aircraft.

*Clean agent* means electrically nonconducting volatile or gaseous fire extinguishing agent that does not leave a residue upon evaporation and has been shown to provide extinguishing action equivalent to halon 1211 under test protocols of FAA Technical Report DOT/FAA/AR–95/87.

*Index* means an airport ranking according to the type and quantity of aircraft rescue and firefighting equipment and agent required, determined by the length and frequency of air carrier aircraft served by the airport, as provided in subpart D of this part.

*Large air carrier aircraft* means, for the purpose of this part, an aircraft with a passenger seating capacity of more than 30 passengers that is operated by an air carrier.

*Movement area* means the runways, taxiways, and other areas of an airport which are used for taxiing, takeoff, and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

*Regional Airports Division Manager* means the airports division manager for the FAA region in which the airport is located.

*Safety area* means a designated area abutting the edges of a runway or taxiway intended to reduce the risk of damage to an aircraft inadvertently leaving the runway or taxiway.

*Scheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator for which the air carrier, commercial operator, or their representatives offers in advance the departure location, departure time, and arrival location. It does not include any operation that is conducted as a supplemental operation under 14 CFR part 119, or is conducted as a public charter operation under 14 CFR part 380.

*Small air carrier aircraft* means, for the purpose of this part, an aircraft with a passenger seating capacity of more than 9 passengers but less than 31 seats that is operated by an air carrier.

*Unscheduled operation* means any common carriage passenger-carrying operation for compensation or hire conducted by an air carrier or commercial operator with aircraft having more than 30 passenger seats that is conducted as a supplemental operation under 14 CFR part 119 or as a public charter under 14 CFR part 380, or for which departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative.

*Wildlife hazard* means a potential for a damaging aircraft collision with wildlife on or near an airport. As used in this part, ''wildlife'' includes domestic animals while out of the control of their owners.

**§ 139.7 Methods and procedures for compliance.**

Certificate holders shall comply with requirements prescribed by subparts C and D of this part in a manner authorized by the Administrator. FAA Advisory Circulars contain methods and procedures for compliance with this part that are acceptable to the Administrator.

## Subpart B—Certification

**§ 139.101 General requirements.**

(a) Except as otherwise authorized by the Administrator, no person may operate an airport specified under § 139.1 without an airport operating certificate, or in violation of that certificate, the applicable provisions of this part, or the approved airport certification manual.

(b) Each airport shall adopt and comply with an airport certification manual as required under § 139.203.

(c) Except as provided in §§ 139.311, 139.321, and 139.327, airports required to have an airport operating certificate under this part shall have their airport certification manual approved and implemented in accordance with the following schedule:

(1) Class I airports—90 days after [the effective date of the final rule].

(2) Class II and III airports—240 days after [the effective date of the final rule].

(3) Class IV airports 180 days after [the effective date of the final rule].

**§ 139.103 Application for certificate.**

Each applicant for an airport operating certificate shall:

(a) Prepare and submit an application, in a form and in the manner prescribed by the Administrator, to the Regional Airports Division Manager.

(b) Submit with the application, two copies of an airport certification manual prepared in accordance with subpart C of this part.

**§ 139.105 Inspection authority.**

Each applicant for, or holder of, an airport operating certificate shall allow the Administrator to make any inspections, including unannounced inspections, or tests to determine compliance with 49 U.S.C. 44706 and the requirements of this part.

**§ 139.107 Issuance of certificate.**

An applicant for an airport operating certificate is entitled to a certificate if:

(a) The certificate holder provides written documentation that air carrier service will begin on a date certain.

(b) The applicant meets the provisions of § 139.103.

(c) The Administrator, after investigation, finds that the applicant is properly and adequately equipped and able to provide a safe airport operating environment in accordance with:

(1) Any limitation that the Administrator finds necessary to ensure safety in air transportation.

(2) The requirements of the airport certification manual as specified under § 139.203.

(3) Any other provisions of this part that the Administrator finds necessary to ensure safety in air transportation.

(d) The Administrator approves the airport certification manual.

**§ 139.109 Duration of certificate.**

(a) An airport operating certificate issued under this part is effective until the certificate holder surrenders it, or the certificate is suspended or revoked by the Administrator.

(b) The Administrator may issue an order revoking an airport operating certificate issued under this part if air carrier operations have not occurred at an airport for 24 consecutive calendar months. Any final order is appealable under 14 CFR part 13.

**§ 139.111 Exemptions.**

(a) An applicant or a certificate holder may petition the Administrator under § 11.25, Petitions for Rulemaking or Exemptions, of this chapter for an exemption from any requirement of this part.

(b) Under section 44706(c), the Administrator may exempt an applicant or a certificate holder that enplanes annually less than one-quarter of 1 percent of the total number of passengers enplaned at all air carrier airports from all, or part, of the aircraft rescue and firefighting equipment requirements of this part, on the grounds that compliance with those requirements is, or would be, unreasonably costly, burdensome, or impractical. An applicant for, or holder of, an airport operating certificate filing for such an exemption shall use the format prescribed under § 139.321.

(c) Each petition filed under this section must be submitted in duplicate to the Regional Airports Division Manager.

**§ 139.113 Deviations.**

In emergency conditions requiring immediate action for the protection of life or property, the certificate holder may deviate from any requirement of subpart D of this part, or the airport certification manual, to the extent required to meet that emergency. Each certificate holder who deviates from a requirement under this section shall, within 14 days after the emergency, notify the Regional Airports Division Manager of the nature, extent, and duration of the deviation. When requested by the Regional Airports Division Manager, the certificate holder shall provide this notification in writing.

## Subpart C—Airport Certification Manual

**§ 139.201 General requirements.**

(a) No person may operate an airport subject to this part unless that person adopts and complies with an airport certification manual as required under this part, that—

(1) Has been approved by the Administrator;

(2) Contains only those items authorized by the Administrator;

(3) Is in printed form and signed by the certificate holder acknowledging the certificate holder's responsibility to operate the airport in compliance with the airport certification manual approved by the Administrator; and

(4) Is in a form that is easy to revise, and organized in a manner helpful to the preparation, review, and approval processes, including a revision log, and on each page or attachment, the date of initial approval, or approval by the Administrator of the latest revision.

(b) Each holder of an airport operating-certificate shall—

(1) Keep its airport certification manual current at all times;

(2) Maintain at least one complete and current copy of its approved airport certification manual on the airport, which will made available for inspection by the Administrator; and

(3) Furnish the applicable portions of the approved airport certification manual to the airport personnel responsible for their implementation.

(c) Each certificated holder shall ensure that the Regional Airports Division Manager is provided a complete copy of its most current approved airport certification manual that is specified under paragraph (b)(2) of this section, including any amendments approved under § 139.209.

(d) FAA Advisory Circulars contain methods and procedures for the development of airport certification manuals that are acceptable to the Administrator.

**§ 139.203 Contents of airport certification manual.**

(a) Except as otherwise authorized by the Administrator, each certificate holder shall include in the airport certification manual a description of operating procedures, facilities and equipment, responsibility assignments, and any other information needed by personnel concerned with operating the airport in order to comply with applicable provisions of subpart D of this part, and paragraph (b) of this section.

(b) Except as otherwise authorized by the Administrator, the certificate holder shall include in its airport certification manual the following elements, as appropriate for its class:

REQUIRED AIRPORT CERTIFICATION MANUAL ELEMENTS

| Manual elements | Airport certificate class | | | |
|---|---|---|---|---|
| | Class I | Class II | Class III | Class IV |
| 1. Lines of succession of airport operational responsibility | X | X | X | X |
| 2. Each current exemption issued to the airport from the requirements of this part | X | X | X | X |
| 3. Any limitations imposed by the Administrator | X | X | X | X |

REQUIRED AIRPORT CERTIFICATION MANUAL ELEMENTS—Continued

| Manual elements | Airport certificate class | | | |
|---|---|---|---|---|
| | Class I | Class II | Class III | Class IV |
| 4. A grid map or other means of identifying locations and terrain features on and around the airport which are significant to emergency operations | X | X | X | X |
| 5. The location of each obstruction required to be lighted or marked within the airport's area of authority | X | X | X | X |
| 6. A description of each movement area available for air carriers and its safety areas and each road described in § 139.319(l) that serves it | X | X | X | X |
| 7. Procedures for avoidance of interruption or failure during construction work of utilities serving facilities or navaids that support air carrier operations | X | X | X | |
| 8. A description of the system for maintaining records as required under § 139.301 | X | X | X | X |
| 9. A description of personnel training as required under § 139.303 | X | X | X | X |
| 10. Procedures for maintaining the paved areas as required under § 139.305 | X | X | X | X |
| 11. Procedures for maintaining the unpaved areas as required under § 139.307 | X | X | X | X |
| 12. Procedures for maintaining the safety areas as required under § 139.309 | X | X | X | X |
| 13. A plan showing the runway and taxiway identification system along with the location and inscription of the signs as required under § 139.311 | X | X | X | X |
| 14. A description of, and procedures for maintaining, the marking, signs, and lighting systems as required under § 139.311 | X | X | X | X |
| 15. A snow and ice control plan as required under § 139.313 | X | X | X | |
| 16. A description of the facilities, equipment, personnel, and procedures for meeting the rescue and firefighting requirements in accordance with §§ 139.317 and 139.319 | X | X | X | X |
| 17. A description of any approved exemption to rescue and firefighting requirements as authorized under § 139.321 | X | X | X | X |
| 18. Procedures for handling fuel, lubricants and oxygen required under § 139.323 | X | X | X | |
| 19. Procedures for handling fuel, lubricants and oxygen | | | | X |
| 20. A description of, and procedures for maintaining, the traffic and wind direction indicators as required under § 139.325 | X | X | X | |
| 21. A description of, and procedures for maintaining, the traffic and wind direction indicators | | | | X |
| 22. An emergency plan as required under § 139.327 | X | X | X | X |
| 23. Procedures for conducting the self-inspection program as required under § 139.329 | X | X | X | |
| 24. Procedures for conducting the self-inspection program | | | | X |
| 25. Procedures for controlling ground vehicles as required under § 139.331 | X | X | X | |
| 26. Procedures for obstruction removal, marking, or lighting as required under § 139.333 | X | X | X | |
| 27. Procedures for protection of navaids as required under § 139.335 | X | X | X | |
| 28. A description of public protection as required under § 139.337 | X | X | X | |
| 29. A wildlife hazard management plan as required under § 139.339 | X | X | X | |
| 30. Procedures for airport condition reporting as required under § 139.341 | X | X | X | X |
| 31. Procedures for identifying, marking, and reporting construction and other unserviceable areas as required under § 139.343 | X | X | X | |
| 32. Any other item that the Administrator finds is necessary to ensure safety in air transportation | X | X | X | X |

**§ 139.205 Amendment of airport certification manual.**

(a) Under § 139.3, the Regional Airports Division Manager may amend any airport certification manual approved under this part, either—

(1) Upon application by the certificate holder; or

(2) On the Regional Airports Division Manager's own initiative if the Regional Airports Division Manager determines that safety in air transportation require the amendment.

(b) A certificate holder shall file an application for an amendment to its airport certification manual with the Regional Airports Division Manager at least 30 days before the proposed effective date of the amendment, unless a shorter filing period is allowed by that office.

(c) At any time within 30 days after receiving a notice of refusal to approve the application for amendment, the certificate holder may petition the Associate Administrator for Airports to reconsider the refusal to amend.

(d) In the case of amendments initiated by the Regional Airports Division Manager, the office notifies the certificate holder of the proposed amendment, in writing, fixing a reasonable period (but not less than 7 days) within which the certificate holder may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Airports Division Manager notifies within 30 days the certificate holder of any amendment adopted or rescinds the notice. The amendment becomes effective not less than 30 days after the certificate holder receives notice of it, except that prior to the effective date the certificate holder may petition the Associate Administrator for Airports to reconsider the amendment, in which case its effective date is stayed pending a decision by the Associate Administrator for Airports.

(e) Notwithstanding the provisions of paragraph (d) of this section, if the Regional Airports Division Manager finds that there is an emergency requiring immediate action with respect to safety in air transportation, the Regional Airports Division Manager may issue an amendment, effective without stay on the date the certificate holder receives notice of it. In such a case, the Regional Airports Division Manager incorporates the finding of the

emergency, and a brief statement of the reasons for the finding, in the notice of the amendment. Within 30 days after the issuance of such an emergency amendment, the certificate holder may petition the Associate Administrator for Airports to reconsider either the finding of an emergency or the amendment itself or both. This petition does not automatically stay the effectiveness of the emergency amendment.

## Subpart D—Operations

### § 139.301 Records.

In a manner authorized by the Administrator, each certificate holder shall:

(a) Furnish upon request by the Administrator all records required to be maintained under this part.

(b) If air carrier operations are less than 10,000 annually, make and maintain a record of air carrier operations, by type of aircraft, that occurred at the airport during previous 24 consecutive calendar months.

(c) Make and maintain any additional records required by the Administrator, this part and the airport certification manual, including, but not limited to, the following recordkeeping requirements of this part:

(1) § 139.303, Personnel.

(2) § 139.319, Aircraft rescue and firefighting: Operational requirements.

(3) § 139.323, Handling and storing of hazardous substances and materials.

(4) § 139.329, Self-inspection program.

(5) § 139.331, Ground vehicles.

(6) § 139.341, Airport condition reporting.

### § 139.303 Personnel.

In a manner authorized by the Administrator, each certificate holder shall:

(a) Provide sufficient and qualified personnel to comply with the requirements of its airport certification manual and the requirements of this part.

(b) Equip personnel with sufficient resources needed to comply with the requirements of this part.

(c) Provide personnel with initial and recurrent training necessary to perform their duties.

(d) Maintain records of all training given to each individual under this section for a period of 24 consecutive calendar months after completion of training. Such records shall include, at a minimum, a description and date of training received.

### § 139.305 Paved areas.

(a) In a manner authorized by the Administrator, each certificate holder shall maintain, and promptly repair the pavement of, each runway, taxiway, loading ramp, and parking area on the airport that is available for air carrier use as follows:

(1) The pavement edges shall not exceed 3 inches difference in elevation between abutting pavement sections, and between pavement and abutting areas.

(2) The pavement shall have no hole exceeding 3 inches in depth, nor any hole the slope of which from any point in the hole to the nearest point at the lip of the hole is 45 degrees or greater, as measured from the pavement surface plane, unless, in either case, the entire area of the hole can be covered by a 5-inch diameter circle.

(3) The pavement shall be free of cracks and surface variations that could impair directional control of air carrier aircraft.

(4) Except as provided in paragraph (b) of this section, mud, dirt, sand, loose aggregate, debris, foreign objects, rubber deposits, and other contaminants shall be removed promptly and as completely as practicable.

(5) Except as provided in paragraph (b) of this section, any chemical solvent that is used to clean any pavement area shall be removed as soon as possible, consistent with the instructions of the manufacturer of the solvent.

(6) The pavement shall be sufficiently drained and free of depressions to prevent ponding that obscures markings or impairs safe aircraft operations.

(b) Paragraphs (a)(4) and (a)(5) of this section do not apply to snow and ice accumulations and their control, including the associated use of materials such as sand and deicing solutions.

(c) FAA Advisory Circulars contain methods and procedures for the maintenance and configuration of paved areas that are acceptable to the Administrator.

### § 139.307 Unpaved areas.

(a) In a manner authorized by the Administrator, each certificate holder shall maintain and promptly repair the surface of each gravel, turf, or other unpaved runway, taxiway, or loading ramp and parking area on the airport which is available for air carrier use as follows:

(1) No slope from the edge of the full-strength surfaces downward to the existing terrain shall be steeper than 2:1.

(2) The full-strength surfaces shall have adequate crown or grade to assure sufficient drainage to prevent ponding.

(3) The full-strength surfaces shall be adequately compacted and sufficiently stable to prevent rutting by aircraft, or the loosening or build-up of surface material which could impair directional control of aircraft or drainage.

(4) The full-strength surfaces must have no holes or depressions which exceed 3 inches in depth and are of a breadth capable of impairing directional control or causing damage to an aircraft.

(5) Debris and foreign objects shall be promptly removed from the surface.

(b) FAA Advisory Circulars contain methods and procedures for the maintenance and configuration of unpaved areas that are acceptable to the Administrator.

### § 139.309 Safety areas.

(a) Unless otherwise specified in the airport certification manual, each certificate holder shall, in a manner authorized by the Administrator, provide and maintain for each runway and taxiway that is available for air carrier use—

(1) If the runway or taxiway had a safety area on December 31, 1987, and if no reconstruction or significant expansion of the runway or taxiway was begun on or after January 1, 1988, a safety area of at least the dimensions that existed on December 31, 1987; or

(2) If construction, reconstruction, or significant expansion of the runway or taxiway began on or after January 1, 1988, a safety area that is authorized by the Administrator at the time construction, reconstruction, or expansion began.

(b) Each certificate holder shall maintain its safety areas as follows:

(1) Each safety area shall be cleared and graded, and have no potentially hazardous ruts, humps, depressions, or other surface variations.

(2) Each safety area shall be drained by grading or storm sewers to prevent water accumulation.

(3) Each safety area shall be capable under dry conditions of supporting snow removal equipment, and aircraft rescue and firefighting equipment, and supporting the occasional passage of aircraft without causing major damage to the aircraft.

(4) No object may be located in any safety area, except for objects that need to be located in a safety area because of their function. These objects shall be constructed, to the extent practical, on frangibly mounted structures of the lowest practical height with the frangible point no higher than 3 inches above grade.

(c) FAA Advisory Circulars contain methods and procedures for the configuration and maintenance of safety areas acceptable to the Administrator.

### § 139.311 Marking, signs, and lighting.

(a) *Marking.* Each certificate holder shall provide and maintain marking

systems for air carrier operations on the airport that are authorized by the Administrator and consists of at least the following:

(1) Runway markings meeting the specifications for takeoff and landing minimums for each runway as authorized by the Administrator.

(2) Taxiway centerline.

(3) Edge markings, as appropriate.

(4) Holding position markings.

(5) ILS critical area markings.

(b) *Signs.* (1) Each certificate holder shall provide and maintain sign systems for air carrier operations on the airport that are authorized by the Administrator and consist of at least the following:

(i) Signs identifying taxiing routes on the movement area.

(ii) Holding position signs.

(iii) Instrument landing system (ILS) critical area signs.

(2) Unless otherwise authorized by the Administrator, the signs required by paragraph (b)(1) of this section shall be internally-illuminated at each Class I, II, and IV airport.

(3) Unless otherwise authorized by the Administrator, the signs required by paragraphs (b)(1) (ii) and (iii) of this section shall be internally-illuminated at each Class III airport.

(c) *Lighting.* Each certificate holder shall provide and maintain lighting systems for air carrier operations when the airport is open at night, during conditions below VFR minimums, or in Alaska, during periods a prominent unlighted object cannot be seen from a distance of 3 statute miles or the sun is more than 6 degrees below the horizon. This lighting systems shall be authorized by the Administrator and consist of at least the following:

(1) Runway lighting meeting the specifications for takeoff and landing minimums for each runway as authorized by the Administrator.

(2) One of the following taxiway lighting systems:

(i) Centerline lights.

(ii) Centerline reflectors.

(iii) Edge lights.

(iv) Edge reflectors.

(3) An airport beacon.

(4) Approach lighting meeting the specifications for takeoff and landing minimums for each runway as authorized by the Administrator, unless otherwise provided and maintained by the FAA or another government agency.

(5) Obstruction marking and lighting, as appropriate, on each object within its authority which has been determined by the FAA to be an obstruction.

(d) *Maintenance.* Each certificate holder shall properly maintain each marking, sign, or lighting system installed and operated on the airport. As used in this section, to ''properly maintain'' includes: To clean, replace, or repair any faded, missing, or nonfunctional item; to keep each item unobscured and clearly visible; and to ensure that each item provides an accurate reference to the user.

(e) *Lighting interference.* Each certificate holder shall ensure that all lighting on the airport, including that for aprons, vehicle parking areas, roadways, fuel storage areas, and buildings, is adequately adjusted or shielded to prevent interference with air traffic control and aircraft operations.

(f) *Standards.* FAA Advisory Circulars contain methods and procedures for the equipment, material, installation, and maintenance of marking, sign, and lighting systems listed in this section that are acceptable to the Administrator.

(g) *Implementation.* The sign systems required under paragraph (b)(3) of this section shall be implemented by each holder of a Class III airport operating certificate not later than 36 consecutive calendar months after [the effective date of the final rule].

**§ 139.313 Snow and ice control.**

(a) As determined by the Administrator, each certificate holder whose airport is located where snow and icing conditions occur shall prepare, maintain, and carry out a snow and ice control plan in a manner authorized by the Administrator.

(b) The snow and ice control plan required by this section shall include, at a minimum, instructions and procedures for—

(1) Prompt removal or control, as completely as practical, of snow, ice, and slush on each movement area;

(2) Positioning snow off the movement area surfaces so that all air carrier aircraft propellers, engine pods, rotors, and wingtips will clear any snowdrift and snowbank as the aircraft's landing gear traverses any portion of the movement area;

(3) Selection and application of authorized materials for snow and ice control to ensure that they adhere to snow and ice sufficiently to minimize engine ingestion;

(4) Timely commencement of snow and ice control operations; and

(5) Prompt notification, in accordance with § 139.341, of all air carriers using the airport when any portion of the movement area normally available to them is less than satisfactorily cleared for safe operation by their aircraft.

(c) FAA Advisory Circulars contain methods and procedures for snow and ice control equipment, materials, and procedures for snow and ice control that are acceptable to the Administrator.

**§ 139.315 Aircraft rescue and firefighting: Index determination.**

(a) An Index is required by paragraph (c) of this section for each certificate holder. The Index is determined by a combination of—

(1) The length of air carrier aircraft; and

(2) Average daily departures of air carrier aircraft.

(b) For the purpose of Index determination, air carrier aircraft lengths are grouped as follows:

(1) Index A includes aircraft less than 90 feet in length.

(2) Index B includes aircraft at least 90 feet but less than 126 feet in length.

(3) Index C includes aircraft at least 126 feet but less than 159 feet in length.

(4) Index D includes aircraft at least 159 feet but less than 200 feet in length.

(5) Index E includes aircraft at least 200 feet in length.

(c) Except as provided in § 139.319(c), if there are five or more average daily departures of air carrier aircraft in a single Index group serving that airport, the longest aircraft with an average of 5 or more daily departures determines the Index required for the airport. When there are fewer than five average daily departures of the longest air carrier aircraft serving the airport, the Index required for the airport will be the next lower Index group than the Index group prescribed for that aircraft.

(d) The minimum designated Index shall be Index A.

**§ 139.317 Aircraft rescue and firefighting: Equipment and agents.**

Unless otherwise authorized by the Administrator, the following rescue and firefighting equipment and agents are the minimum required for the Indexes referred to in § 139.315:

(a) *Index A.* One vehicle carrying at least—

(1) 500 pounds of sodium-based dry chemical, halon 1211, or clean agent; or

(2) 450 pounds of potassium-based dry chemical and water with a commensurate quantity of AFFF to total 100 gallons, for simultaneous dry chemical and AFFF foam application.

(b) *Index B.* Either of the following:

(1) One vehicle carrying at least 500 pounds of sodium-based dry chemical, halon 1211, or clean agent, and 1,500 gallons of water, and the commensurate quantity of AFFF for foam production.

(2) Two vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(ii) One vehicle carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water

for foam production carried by both vehicles is at least 1,500 gallons.

(c) *Index C.* Either of the following:

(1) Three vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(ii) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 3,000 gallons.

(2) Two vehicles—

(i) One vehicle carrying the extinguishing agents as specified in paragraph (b)(1) of this section; and

(ii) One vehicle carrying water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by both vehicles is at least 3,000 gallons.

(d) *Index D.* Three vehicles—

(1) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 4,000 gallons.

(e) *Index E.* Three vehicles—

(1) One vehicle carrying the extinguishing agents as specified in paragraph (a)(1) or (2) of this section; and

(2) Two vehicles carrying an amount of water and the commensurate quantity of AFFF so that the total quantity of water for foam production carried by all three vehicles is at least 4,000 gallons.

(f) *Existing vehicles.* Notwithstanding the provisions of paragraphs (a) through (e) of this section, any certificate holder whose vehicles met the requirements of this part for quantity and type of extinguishing agent on December 31, 1987, may comply with the Index requirements of this section by carrying extinguishing agents to the full capacity of those vehicles. Whenever any of those vehicles is replaced or rehabilitated, the capacity of the replacement or rehabilitated vehicle shall be sufficient to comply with the provisions of the required Index under this section.

(g) *Foam discharge capacity.* Each aircraft rescue and firefighting vehicle used to comply with Index B, C, D, or E requirements with a capacity of at least 500 gallons of water for foam production shall be equipped with a turret. Vehicle turret discharge capacity shall be as follows:

(1) Each vehicle with a minimum rated vehicle water tank capacity of at least 500 gallons but less than 2,000 gallons shall have a turret discharge rate of at least 500 gallons per minute but not more than 1,000 gallons per minute.

(2) Each vehicle with a minimum rated vehicle water tank capacity of at least 2,000 gallons shall have a turret discharge rate of at least 600 gallons per minute but not more than 1,200 gallons per minute.

(3) Notwithstanding the requirements of this paragraph (g), any certificate holder whose aircraft rescue and firefighting vehicles are not equipped with turrets or do not have the discharge capacity required in this section, but otherwise met the requirements of this part on December 31, 1987, need not comply with this paragraph (g) for a particular vehicle until that vehicle is replaced or rehabilitated.

(h) *Agent discharge capacity.* Each aircraft rescue and firefighting vehicle which is required to carry dry chemical, halon 1211, or clean agent for compliance with the index requirements of this section must meet one of the following minimum discharge rates for the equipment installed:

(1) Dry chemical, halon 1211, or clean agent through a hand line, 5 pounds per second.

(2) Dry chemical, halon 1211, or clean agent through a turret, 16 pounds per second.

(i) *Extinguishing agent substitutions.* Other extinguishing agent substitutions authorized by the Administrator may be made in amounts that provide equivalent firefighting capability.

(j) *AFFF Quantity Requirements.* In addition to the quantity of water required, each vehicle required to carry AFFF shall carry AFFF in an appropriate amount to mix with twice the water required to be carried by the vehicle.

(k) *Methods and procedures.* FAA Advisory Circulars in the 150 series contain standards and procedures for ARFF equipment and extinguishing agents that are acceptable to the Administrator.

(l) *Implementation.* Each holder of a Class II, III, or IV airport operating certificate shall implement the requirements of this section no later than 24 consecutive calendar months after [the effective date of the final rule].

**§ 139.319 Aircraft rescue and firefighting: Operational requirements.**

(a) *Rescue and firefighting capability.* Except as provided in paragraph (c) of this section, each certificate holder shall provide on the airport, during air carrier operations at the airport, at least the rescue and firefighting capability specified for the Index required by § 139.317 in a manner authorized by the Administrator.

(b) *Increase in Index.* Except as provided in paragraph (c) of this section, if an increase in the average daily departures or the length of air carrier aircraft results in an increase in the Index required by paragraph

(a) of this section, the certificate holder shall comply with the increased requirements.

(c) *Reduction in rescue and firefighting.* During air carrier operations with only aircraft shorter than the Index aircraft group required by paragraph (a) of this section, the certificate holder may reduce the rescue and firefighting to a lower level corresponding to the Index group of the longest air carrier aircraft being operated.

(d) *Procedures for reduction in capability.* Any reduction in the rescue and firefighting capability from the Index required by paragraph (a) of this section in accordance with paragraph (c) of this section shall be subject to the following conditions:

(1) Procedures for, and the persons having the authority to implement, the reductions must be included in the airport certification manual.

(2) A system and procedures for recall of the full aircraft rescue and firefighting capability must be included in the airport certification manual.

(3) The reductions may not be implemented unless notification to air carriers is provided in the Airport/Facility Directory or Notices to Airmen (NOTAM), as appropriate, and by direct notification of local air carriers.

(e) *Vehicle communications.* Each vehicle required under § 139.317 shall be equipped with two-way voice radio communications that provides for contact with at least—

(1) Each other required emergency vehicle;

(2) The air traffic control tower, if it is located on the airport; and

(3) Other stations, as specified in the airport emergency plan.

(f) *Vehicle marking and lighting.* Each vehicle required under § 139.317 shall—

(1) Have a flashing or rotating beacon; and

(2) Be painted or marked in colors to enhance contrast with the background environment and optimize daytime and nighttime visibility and identification.

(g) *Vehicle readiness.* Each vehicle required under § 139.317 shall be maintained as follows:

(1) The vehicle and its systems shall be maintained so as to be operationally capable of performing the functions required by this subpart during all air carrier operations.

(2) If the airport is located in a geographical area subject to prolonged

temperatures below 33 degrees Fahrenheit, the vehicles shall be provided with cover or other means to ensure equipment operation and discharge under freezing conditions.

(3) Any required vehicle that becomes inoperative to the extent that it cannot perform as required by paragraph (h)(1) of this section shall be replaced immediately with equipment having at least equal capabilities. If replacement equipment is not available immediately, the certificate holder shall so notify the Regional Airports Division Manager and each air carrier using the airport in accordance with § 139.341. If the required Index level of capability is not restored within 48 hours, the airport operator, unless otherwise authorized by the Administrator, shall limit air carrier operations on the airport to those compatible with the Index corresponding to the remaining operative rescue and firefighting equipment.

(h) *Response requirements.* (1) With the airport rescue and fire-fighting equipment required under this part and the number of trained personnel which will assure an effective operation, each certificate holder shall—

(i) Respond to each emergency during periods of air carrier operations; and

(ii) When requested by the Administrator, demonstrate compliance with the response requirements specified in this section.

(2) The response required by paragraph (h)(1)(ii) of this section shall achieve the following performance:

(i) Within 3 minutes from the time of the alarm, at least one required airport rescue and firefighting vehicle shall reach the midpoint of the farthest runway serving air carrier aircraft from its assigned post, or reach any other specified point of comparable distance on the movement area which is available to air carriers, and begin application of extinguishing agent.

(ii) Within 4 minutes from the time of alarm, all other required vehicles shall reach the point specified in paragraph (h)(2)(i) of this section from their assigned post and begin application of extinguishing agent.

(i) *Personnel.* Each certificate holder shall ensure the following:

(1) All rescue and firefighting personnel are equipped in a manner authorized by the Administrator with protective clothing and equipment needed to perform their duties.

(2) All rescue and firefighting personnel are properly trained to perform their duties in a manner authorized by the Administrator. Such personnel shall be trained prior to initial performance of rescue and firefighting duties, and receive recurrent instruction every 12 consecutive calendar months. Curriculum for initial and recurrent training shall include at least the following areas:

(i) Airport familiarization.

(ii) Aircraft familiarization.

(iii) Rescue and firefighting personnel safety.

(iv) Emergency communications systems on the airport, including fire alarms.

(v) Use of the fire hoses, nozzles, turrets, and other appliances required for compliance with this part.

(vi) Application of the types of extinguishing agents required for compliance with this part.

(vii) Emergency aircraft evacuation assistance.

(viii)Firefighting operations.

(ix) Adapting and using structural rescue and firefighting equipment for aircraft rescue and firefighting.

(x) Aircraft cargo hazards, including hazardous materials/dangerous goods incidents.

(xi) Familiarization with firefighters' duties under the airport emergency plan.

(3) All rescue and firefighting personnel participate in at least one live-fire drill every 12 consecutive calendar months.

(4) At least one of the required personnel on duty during air carrier operations has been trained and is current in basic emergency medical services. Such personnel shall be trained prior to initial performance of emergency medical services, and receive recurrent instruction every 12 consecutive calendar months. Training shall include at least 40 hours covering the following areas:

(i) Bleeding.

(ii) Cardiopulmonary resuscitation.

(iii) Shock.

(iv) Primary patient survey.

(v) Injuries to the skull, spine, chest, and extremities.

(vi) Internal injuries.

(vii) Moving patients.

(viii) Burns.

(ix) Triage.

(5) Each certificate holder shall maintain a record of all training given to each individual under this section for 24 consecutive calendar months after completion of training. Such records shall include, at a minimum, a description and date of training received.

(6) Sufficient rescue and firefighting personnel are available during all air carrier operations to operate the vehicles, meet the response times, and meet the minimum agent discharge rates required by this part;

(7) Procedures and equipment are established and maintained for alerting rescue and firefighting personnel by siren, alarm, or other means authorized by the Administrator, to any existing or impending emergency requiring their assistance.

(j) *Hazardous materials guidance.* Each aircraft rescue and firefighting vehicle responding to an emergency on the airport shall be equipped with, or have available through a direct communications link, the North American Emergency Response Guidebook published by the U.S. Department of Transportation or similar response guidance to hazardous materials/dangerous goods incidents.

(k) *Emergency access roads.* Each certificate holder shall ensure that roads which are designated for use as emergency access roads for aircraft rescue and firefighting vehicles are maintained in a condition that will support those vehicles during all-weather conditions.

(l) *Methods and procedures.* FAA Advisory Circulars contain methods and procedures for ARFF and emergency medical equipment and training that are acceptable to the Administrator.

(m) *Implementation.* Each holder of a Class II, III, or IV airport operating certificate shall implement the requirements of this section no later than 24 consecutive calendar months after [the effective date of the final rule].

**§ 139.321 Aircraft rescue and firefighting: Exemptions.**

(a) Under § 139.111, a certificate holder may petition the Associate Administrator for Airports for an exemption from ARFF requirements of §§ 139.317 and 139.319.

(b) Each petition filed under this section must—

(1) Be submitted in writing at least 120 days before the proposed effective date of the exemption;

(2) Be submitted in duplicate to the Regional Airports Division Manager;

(3) Set forth the text of § 139.317 or § 139.319 from which the exemption is sought;

(4) Explain the interest of the certificate holder in the action requested, including the nature and extent of relief sought, and alternative means of compliance proposed; and

(5) Contain information, views, or arguments that demonstrates that the requirements of § 139.317 or § 139.319 would be unreasonably costly, burdensome, or impractical.

(c) The Associate Administrator for Airports may grant an exemption to the requirements of §§ 139.317 and 139.319 if it is determined that—

(1) The certificate holder's compliance with the requirements of §§ 139.317 and 139.319 would be unreasonably costly, burdensome, or impractical; and

(2) The exemption granted would provide a level of safety in responding to emergencies involving air carrier operations that is equivalent to the rescue and firefighting response required under §§ 139.317 and 139.319. In determining whether to grant an exemption, the Administrator shall consider the certificate holder's provisions for the following:

(i) Pre-arranged firefighting and basic emergency medical response that is on-airport 15 minutes before and 15 minutes after an air carrier aircraft takes off or lands;

(ii) Capability of responding emergency equipment and fire extinguishing agents to address aircraft fire and rescue situations;

(iii) Initial and recurrent training of responding personnel on the use of emergency equipment, basic emergency medical response, and airport familiarization;

(iv) Procedures to provide replacement emergency equipment or personnel in the event pre-arranged firefighting and basic emergency medical response specified in paragraph (c)(2)(i) of this section becomes unavailable; and

(v) Planned action to come into compliance with the rescue and firefighting response requirements of §§ 139.317 and 139.319.

(d) Upon approval of the petition, the certificate holder shall include in the airport certification manual the exemption approved under paragraph (c) of this section.

**§ 139.323 Handling and storing of hazardous substances and materials.**

(a) Each certificate holder which acts as a cargo handling agent shall establish and maintain procedures for the protection of persons and property on the airport during the handling and storing of any material regulated by the Hazardous Materials Regulations (49 CFR parts 171 through 180), that is, or is intended to be, transported by air. These procedures shall provide for at least the following:

(1) Designated personnel to receive and handle hazardous substances and materials.

(2) Assurance from the shipper that the cargo can be handled safely, including any special handling procedures required for safety.

(3) Special areas for storage of hazardous materials while on the airport.

(b) Each certificate holder shall establish and maintain standards authorized by the Administrator for protecting against fire and explosions in storing, dispensing, and otherwise handling fuel, lubricants, and oxygen (other than articles and materials that are, or are intended to be, aircraft cargo) on the airport. These standards shall cover facilities, procedures, and personnel training and shall address at least the following:

(1) Bonding.

(2) Public protection.

(3) Control of access to storage areas.

(4) Fire safety in fuel farm and storage areas.

(5) Fire safety in mobile fuelers, fueling pits, and fueling cabinets.

(6) Training of fueling personnel in fire safety in accordance with paragraph (e) of this section. Such training at Class III airports must be completed within 12 consecutive calendar months after [the effective date of the final rule].

(7) The fire code of the public body having jurisdiction over the airport.

(c) Each certificate holder shall, as a fueling agent, comply with, and require all other fueling agents operating on the airport to comply with, the standards established under paragraph (b) of this section and shall perform reasonable surveillance of all fueling activities on the airport with respect to those standards.

(d) Each certificate holder shall inspect the physical facilities of each airport tenant fueling agent at least once every 3 consecutive calendar months for compliance with paragraph (b) of this section and maintain a record of that inspection for at least 12 consecutive calendar months. The certificate holder may use an independent organization to perform this inspection if—

(1) It is authorized by the Administrator; and

(2) It prepares a record of its inspection sufficiently detailed to assure the certificate holder and the FAA that the inspection is adequate.

(e) The training required in paragraph (b)(6) of this section shall include at least the following:

(1) At least one supervisor with each fueling agent shall have completed an aviation fuel training course in fire safety that is authorized by the Administrator. Such an individual shall be trained prior to initial performance of duties, and receive recurrent instruction every 24 consecutive calendar months.

(2) All other employees who fuel aircraft, accept fuel shipments, or otherwise handle fuel shall receive at least on-the job training and recurrent instruction every 12 consecutive calendar months in fire safety from the supervisor trained in accordance with paragraph (e)(1) of this section.

(f) Each certificate holder shall obtain written confirmation once every 12 consecutive calendar months from each airport tenant fueling agent that the training required by paragraph (e) of this section has been accomplished.

(g) Unless otherwise authorized by the Administrator, each certificate holder shall require each tenant fueling agent to take immediate corrective action whenever the certificate holder becomes aware of noncompliance with a standard required by paragraph (b) of this section. The certificate holder shall notify the appropriate FAA Regional Airports Division Manager immediately when noncompliance is discovered and corrective action cannot be accomplished within a reasonable period of time.

(h) FAA Advisory Circulars contain methods and procedures for the handling and storage of hazardous substances and materials that are acceptable to the Administrator.

**§ 139.325 Traffic and wind direction indicators.**

In a manner authorized by the Administrator, each certificate holder shall provide the following on its airport:

(a) A wind cone that provides surface wind direction information visually to pilots. Supplemental wind cones must be installed at each runway end or at least at one point visible to the pilot while on final approach and prior to takeoff. If the airport is open for air carrier operations during hours of darkness, the wind direction indicators, including the required supplemental indicators, must be lighted.

(b) For airports serving any air carrier operation when there is no control tower operating, a landing strip and traffic pattern indicator for each runway with a right-hand traffic pattern. If there is no segmented circle, such landing strip and traffic pattern indicators must be installed on or near the end of the runway.

(c) FAA Advisory Circulars contain methods and standards for the installation, lighting and maintenance of wind cones and segmented circles that are acceptable to the Administrator.

**§ 139.327 Airport emergency plan.**

(a) In a manner authorized by the Administrator, each certificate holder shall develop and maintain an airport emergency plan designed to minimize the possibility and extent of personal injury and property damage on the airport in an emergency. The plan shall—

(1) Include procedures for prompt response to all of the emergencies listed in paragraph (b) of this section, including a communications network; and

(2) Sufficient detail to provide adequate guidance to each person who must implement it; and

(3) To extent practicable, provide for emergency response for the largest air carrier aircraft that the airport reasonably can be expected to serve.

(b) The plan required by this section must contain instructions for response to—

(1) Aircraft incidents and accidents;

(2) Bomb incidents, including designated parking areas for the aircraft involved;

(3) Structural fires;

(4) Fires at fuel farms or fuel storage areas;

(5) Natural disaster;

(6) Hazardous materials/dangerous goods incidents;

(7) Sabotage, hijack incidents, and other unlawful interference with operations;

(8) Failure of power for movement area lighting; and

(9) Water rescue situations, as appropriate.

(c) The plan required by this section must address or include—

(1) To the extent practicable, provisions for medical services including transportation and medical assistance for the maximum number of persons that can be carried on the largest air carrier aircraft that the airport reasonably can be expected to serve;

(2) The name, location, telephone number, and emergency capability of each hospital and other medical facility, and the business address and telephone number of medical personnel on the airport or in the communities it serves, agreeing to provide medical assistance or transportation;

(3) The name, location, and telephone number of each rescue squad, ambulance service, military installation, and government agency on the airport or in the communities it serves, that agrees to provide medical assistance or transportation;

(4) An inventory of surface vehicles and aircraft that the facilities, agencies, and personnel included in the plan under paragraphs (c)(2) and (c)(3) of this section will provide to transport injured and deceased persons to locations on the airport and in the communities it serves;

(5) Each hangar or other building on the airport or in the communities it serves that will be used to accommodate uninjured, injured, and deceased persons;

(6) Crowd control, specifying the name and location of each safety or security agency that agrees to provide assistance for the control of crowds in the event of an emergency on the airport; and

(7) The removal of disabled aircraft including to the extent practical the name, location and telephone numbers of agencies with aircraft removal responsibilities or capabilities.

(d) The plan required by this section must provide for—

(1) The marshalling, transportation, and care of ambulatory injured and uninjured accident survivors;

(2) The removal of disabled aircraft;

(3) Emergency alarm or notification systems; and

(4) Coordination of airport and control tower functions relating to emergency actions, as appropriate.

(e) The plan required by this section shall contain procedures for notifying the facilities, agencies, and personnel who have responsibilities under the plan of the location of an aircraft accident, the number of persons involved in that accident, or any other information necessary to carry out their responsibilities, as soon as that information is available.

(f) The plan required by this section shall contain provisions, to the extent practicable, for the rescue of aircraft accident victims from significant bodies of water or marsh lands adjacent to the airport which are crossed by the approach and departure flight paths of air carriers. A body of water or marsh land is significant if the area exceeds one-quarter square mile and cannot be traversed by conventional land rescue vehicles. To the extent practicable, the plan shall provide for rescue vehicles with a combined capacity for handling the maximum number of persons that can be carried on board the largest air carrier aircraft that the airport reasonably can be expected to serve.

(g) Each certificate holder shall—

(1) Coordinate its plan with law enforcement agencies, rescue and firefighting agencies, medical personnel and organizations, the principal tenants at the airport, and all other persons who have responsibilities under the plan;

(2) To the extent practicable, provide for participation by all facilities, agencies, and personnel specified in paragraph (g)(1) of this section in the development of the plan;

(3) Ensure that all airport personnel having duties and responsibilities under the plan are familiar with their assignments and are properly trained; and

(4) At least once every 12 consecutive calendar months, review the plan with all of the parties with whom the plan is coordinated as specified in paragraph (g)(1) of this section, to ensure that all parties know their responsibilities and that all of the information in the plan is current.

(h) Each holder of a Class I airport operating certificate shall hold a full-scale airport emergency plan exercise at least once every 36 consecutive calendar months.

(i) FAA Advisory Circulars contain methods and procedures for the development of an airport emergency plan that are acceptable to the Administrator.

(j) The emergency plan required by this section shall be submitted by each holder of a Class II, III, or IV airport operating certificate no later than 12 consecutive calendar months after [the effective date of the final rule.]

**§ 139.329 Self-inspection program.**

(a) In a manner authorized by the Administrator, each certificate holder, or designee, shall inspect the airport to assure compliance with this subpart—

(1) Daily, except as otherwise required by the airport certification manual;

(2) When required by any unusual condition such as construction activities or meteorological conditions that may affect safe air carrier operations; and

(3) Immediately after an accident or incident.

(b) Each certificate holder shall provide the following:

(1) Equipment for use in conducting safety inspections of the airport;

(2) Procedures, facilities, and equipment for reliable and rapid dissemination of information between airport personnel and its air carriers;

(3) Procedures to ensure that qualified inspection personnel perform the inspections, as specified under § 139.303; and are trained annually in least the following areas:

(i) Airport familiarization.

(ii) Airport emergency plan.

(iii) Notice to Airmen (NOTAM) notification procedures.

(iv) Ground vehicle operations.

(v) Discrepancy reporting procedures.

(vi) Airport marking, lighting and sign systems; and

(4) A reporting system to ensure prompt correction of unsafe airport conditions noted during the inspection, including wildlife strikes.

(c) Each certificate holder shall prepare and keep for at least 6 consecutive calendar months, and make available for inspection by the Administrator on request, a record of each inspection prescribed by this section, showing the conditions found and all corrective actions taken.

(d) FAA Advisory Circulars contain methods and procedures for the conduct of airport self-inspections that are acceptable to the Administrator.

**§ 139.331 Ground vehicles.**

In a manner authorized by the Administrator, each certificate holder shall—

(a) Limit access to movement areas and safety areas only to those ground vehicles necessary for airport operations;

(b) Establish and implement procedures for the safe and orderly access to, and operation on, the movement area and safety areas by ground vehicles, including provisions identifying the consequences of noncompliance with the procedures by an employee, tenant, or contractor;

(c) When an air traffic control tower is in operation, ensure that each ground vehicle operating on the movement area is controlled by one of the following:

(1) Two-way radio communications between each vehicle and the tower;

(2) An escort vehicle with two-way radio communications with the tower to accompany any vehicle without a radio; or

(3) Measures authorized by the Administrator for controlling vehicles, such as signs, signals, or guards, when it is not operationally practical to have two-way radio communications with the vehicle or an escort vehicle;

(d) When an air traffic control tower is not in operation, provide adequate procedures to control ground vehicles on the movement area through prearranged signs or signals;

(e) Ensure that each employee, tenant, or contractor who operates a ground vehicle on any portion of the airport that has access to the movement area is familiar with the airport's procedures for the operation of ground vehicles and the consequences of noncompliance; and

(f) On request by the Administrator, make available for inspection any record of accidents or incidents on the movement areas involving air carrier aircraft and/or ground vehicles.

**§ 139.333 Obstructions.**

In a manner authorized by the Administrator, each certificate holder shall ensure that each object in each area within its authority which exceeds any of the heights or penetrates the imaginary surfaces described in part 77 of this chapter is either removed, marked, or lighted. However, removal, marking, and lighting are not required if they are determined to be unnecessary by an FAA aeronautical study. FAA Advisory Circulars contain methods and procedures for the lighting of obstructions that are acceptable to the Administrator.

**§ 139.335 Protection of navaids.**

In a manner authorized by the Administrator, each certificate holder shall—

(a) Prevent the construction of facilities on its airport that, as determined by the Administrator, would derogate the operation of an electronic or visual navaid and air traffic control facilities on the airport;

(b) Protect, or if the owner is other than the certificate holder, assist in protecting, all navaids on its airport against vandalism and theft; and

(c) Prevent, insofar as it is within the airport's authority, interruption of visual and electronic signals of navaids.

**§ 139.337 Public protection.**

(a) In a manner authorized by the Administrator, each certificate holder shall provide—

(1) Safeguards to prevent inadvertent entry to the movement area by unauthorized persons or vehicles; and

(2) Reasonable protection of persons and property from aircraft blast.

(b) Fencing meeting the requirements of part 107 of this chapter in areas subject to part 107 of this chapter is acceptable for meeting the requirements of paragraph (a)(1) of this section.

**§ 139.339 Wildlife hazard management.**

(a) In accordance with its airport certification manual and the requirements of this section, each certificate holder shall take immediate action to alleviate wildlife hazards whenever they are detected.

(b) In a manner authorized by the Administrator, each certificate holder shall ensure that a wildlife hazard assessment is conducted when any of the following events occurs on or near the airport:

(1) An air carrier aircraft experiences a multiple bird strike or engine ingestion.

(2) An air carrier aircraft experiences a damaging collision with wildlife other than birds.

(3) Wildlife of a size or in numbers capable of causing an event described in paragraph (b)(1) or (2) of this section has access to any airport flight pattern or aircraft movement area.

(c) The assessment required in paragraph (b) of this section shall be conducted by a wildlife damage management biologist that has at least a Bachelor of Science degree in wildlife biology, wildlife management or related field and professional training and/or experience in wildlife hazard management at airports, or an individual working under the direct supervision of the such an individual. The assessment shall contain at least the following:

(1) An analysis of the events or circumstances which prompted the assessment.

(2) Identification of the wildlife species observed, and their numbers, locations, local movements, and daily and seasonal occurrences.

(3) Identification and location of features on and near the airport that attract wildlife.

(4) A description of wildlife hazard to air carrier operations.

(5) Recommended actions for reducing identified wildlife hazards to air carries operations.

(d) The assessment shall be submitted to the Administrator for approval and determination of the need for a wildlife hazard management plan. In reaching this determination, the Administrator will consider:

(1) The wildlife hazard assessment required under paragraph (b) of this section.

(2) Actions recommended in the wildlife hazards assessment to reduce wildlife hazards.

(3) The aeronautical activity at the airport.

(4) The views of the certificate holder.

(5) The views of the airport users.

(6) Any other known factors relating to the wildlife hazard of which the Administrator is aware.

(e) When the Administrator determines that a wildlife hazard management plan is needed, the certificate holder shall formulate and implement a plan using the wildlife hazard assessment as a basis. The plan shall:

(1) Provide measures to alleviate or eliminate wildlife hazards to air carrier operations;

(2) Be submitted to, and approved by, the Administrator prior to implementation; and

(3) As authorized by the Administrator, become a part of the Airport Certification Manual.

(f) The plan shall include at least the following:

(1) A list of the individuals having authority and responsibility for implementing each aspect of the plan.

(2) A list prioritizing the following actions identified in the wildlife hazard assessment and target dates for their completing:

(i) Wildlife population management;

(ii) Habitat modification; and

(iii) Land use changes.

(3) Requirements for and, where applicable, copies of local, State, and Federal wildlife control permits.

(4) Identification of resources that the certificate holder will provide to implement the plan.

(5) Procedures to be followed during air carrier operations, that at a minimum includes:

(i) Designation of personnel responsible for implementing the procedures;

(ii) Provisions to conduct physical inspections of the aircraft movement areas and other areas critical to successfully manage known wildlife hazard before air carrier operations begin;

(iii) Wildlife hazard control measures; and

(iv) Ways to effectively communicate between wildlife control personnel and any air traffic control tower operating at the airport.

(6) Describe procedures to review and evaluate the wildlife hazard management plan annually or following an event described in paragraphs (b)(1), (2) and (3) of this section, including:

(i) The plan's effectiveness in dealing with known wildlife hazards on and in the airport's vicinity; and

(ii) Aspects of the wildlife hazards, as described in the wildlife hazard assessment, that should be reevaluated.

(7) A training program conducted by qualified wildlife damage management biologist(s) to provide airport personnel with the knowledge and skills needed to successfully carry out the wildlife hazard management plan required by paragraph (d) of this section.

(g) At Class II or III airports, implementation of the wildlife mitigation procedures shall take into account the frequency and size of air carrier aircraft.

(h) FAA Advisory Circulars contain methods and procedures for wildlife hazard management at airports that are acceptable to the Administrator.

**§ 139.341 Airport condition reporting.**

In a manner authorized by the Administrator, each certificate holder shall:

(a) Provide for the collection and dissemination of airport condition information to air carriers.

(b) In complying with paragraph (a) of this section, utilize the NOTAM system, as appropriate, and other systems and procedures authorized by the Administrator.

(c) In complying with paragraph (a) of this section, provide information on the following airport conditions that may affect the safe operations of air carriers:

(1) Construction or maintenance activity on movement areas, safety areas, or loading ramps and parking areas.

(2) Surface irregularities on movement areas, safety areas, or loading ramps and parking areas.

(3) Snow, ice, slush, or water on the movement area or loading ramps and parking areas.

(4) Snow piled or drifted on or near movement areas contrary to § 139.313.

(5) Objects on the movement area or safety areas contrary to § 139.309.

(6) Malfunction of any sign or lighting system required by § 139.311.

(7) Unresolved wildlife hazards as identified in accordance with § 139.339.

(8) Non-availability of any rescue and firefighting capability required in § 139.317, § 139.319, or § 139.321.

(9) Any other condition as specified in the airport certification manual, or which may otherwise adversely affect the safe operations of air carriers.

(d) FAA Advisory Circulars contain methods and procedures for using the NOTAM system and the dissemination of airport information that are acceptable to the Administrator.

**§ 139.343 Identifying, marking, and reporting construction and other unserviceable areas.**

(a) In a manner authorized by the Administrator, each certificate holder shall—

(1) Mark and, if appropriate, light in a manner authorized by the Administrator—

(i) Each construction area and unserviceable area which is on or adjacent to any movement area or any other area of the airport on which air carrier aircraft may be operated;

(ii) Each item of construction equipment and each construction roadway, which may affect the safe movement of aircraft on the airport; and

(iii) Any area adjacent to a navaid that, if traversed, could cause derogation of the signal or the failure of the navaid; and

(2) Provide procedures, such as a review of all appropriate utility plans prior to construction, for avoiding damage to existing utilities, cables, wires, conduits, pipelines, or other underground facilities.

(b) FAA Advisory Circulars contain methods and procedures for identifying and marking construction areas that are acceptable to the Administrator.

**§ 139.345 Noncomplying conditions.**

Unless otherwise authorized by the Administrator, whenever the requirements of subpart D of this part cannot be met to the extent that uncorrected unsafe conditions exist on the airport, the certificate holder shall limit air carrier operations to those portions of the airport not rendered unsafe by those conditions.

Issued in Washington, DC, on June 2, 2000.

**Paul L. Galis,**

*Acting Associate Administrator for Airports.*

[FR Doc. 00–14524 Filed 6–20–00; 8:45 am]

BILLING CODE 4910–13–U

Federal Register

**Wednesday,**
**June 21, 2000**

## Part III

# Federal Communications Commission

**47 CFR Parts 54, 61, and 69**
**Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long Distance Users and Federal-State Joint Board on Universal Service; Final Rule**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Parts 54, 61, and 69**

**[CC Docket Nos. 96–262; 94–1; 99–249; 96–45; FCC 00–193]**

## Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, and Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts an integrated interstate access reform and universal service proposal put forth by the members of the Coalition for Affordable Local and Long-distance Service (CALLS). By adopting this document, the Commission takes action to further accelerate the development of competition in the local and long-distance telecommunications markets, and to further establish explicit universal service support that will be sustainable in an increasingly competitive marketplace, pursuant to the mandate of the 1996 Act.

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

**FOR FURTHER INFORMATION CONTACT:** Joi Roberson Nolen, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1520.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Sixth Report and Order in CC Docket Nos. 96–262 and 94–1, Report and Order in CC Docket No. 99–249, Seventh Report and Order in CC Docket No. 96–45 (''CALLS Report and Order'') adopted on May 31, 2000 and released on May 31, 2000. The full text of this Report and Order, as well as the complete files for the relevant dockets, is available for inspection and copying during the weekday hours of 9 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th Street, SW, Room CY–A257, Washington, DC or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th Street., NW, Washington, DC 20036; (202) 857–3088. The complete text of the Order also may be obtained through the World Wide Web at http://*www.fcc.gov.*

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. 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.

*OMB Approval Number:* 3060–0942.

*Expiration Date:* 12/31/2000.

*Title:* Access Charge Reform—CC Docket No. 96–262 (*Sixth Report and Order*) Price

*Cap Performance Review for Local Exchange Carriers*—CC Docket No. 94–1 (*Sixth Report and Order*), Low-Volume Long-Distance Users—CC Docket No. 99–249 (*Report and Order*), Federal-State Joint Board on Universal Service—CC Docket No. 96–45 (*Eleventh Report and Order*).

*Form No.:* N/A.

*Respondents:* Business or other for profit.

(1) *Estimates of hour burden of the collection of information.*

(*a) Modified tariff filings with the Commission:*

Number of Respondents: 18.

Frequency of Response: On occasion. 1 per year.

Annual Hour Burden: 2.

Total Annual Hour Burden for All Respondents: 36.

(b) *USAC filings. Price Cap LECs—line counts:*

Number of Respondents: 18.

Frequency of Response: Quarterly. 4 per year.

Annual Hour Burden: 20.

Total Annual Hour Burden for All Respondents: 20 hours per respondent × 18 respondents = 360.

(*c) Price Cap LECs-price and revenue data:*

Number of Respondents: 18.

Frequency of Response: Annual. 1 per year (2 in the year 2000 only).

*Total Annual Hour Burden for All Respondents:* 6081 (12,162 in the year 2000).

*(d) Competitive LECs:*

*Number of Respondents:* 9

*Frequency of Response:* Quarterly. 4 per year.

*Annual Hour Burden:* 20 hours.

*Total Annual Hour Burden for All Respondents:* 20 hours per respondent × 9 respondents = 180 hours.

*(e) Total Annual Hour Burden for price cap LECs and CLECs: 6621.*

*(f) Cost support filings with the Commission:*

*Number of Respondents:* 2

*Frequency of Response:* 1 per year.

*Total Annual Hour Burden for all Respondents:* 20

*(g) Total Annual Burden for All Collections:* 36 + 360 + 12,162 + 180 + 20 = 12,758 hours.

*(h) Estimated Annual Reporting and Recordkeeping Cost Burden: $0.*

**Needs and Uses**

The Commission will use the modified tariff information filed by the price cap local exchange carriers (LECs) to ensure compliance with the various interstate access reforms of the CALLS proposal. USAC will use the line count and other information filed by price cap and competitive LECs to determine, on a per-line basis, the amount that the carrier will receive from the interstate access universal service support mechanism. The Commission will use the cost support information filed by the price cap LECs to ensure that their interstate access rates are just and reasonable, as required by section 201(b) of the Communications Act.

*Obligation to respond:* Required to obtain or retain benefits.

Public reporting burden for the collections of information are as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

**Regulatory Flexibility Certification**

As required by the Regulatory Flexibility Act, this Report and Order contains a Final Regulatory Flexibility Analysis regarding the Order. A brief description of the analysis follows. Pursuant to section 604 of the Regulatory Flexibility Act, the Commission performed a comprehensive analysis of the Order with regard to small entities. This analysis includes: (1) A succinct statement of the need for, and objectives of, the Commission's decisions in the Order; (2) a summary of the significant issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the Commission's assessment of these issues, and a statement of any changes made in the Order as a result of the comments; (3) a description of and an estimate of the number of small entities to which the Order will apply; (4) a description of the projected reporting, recordkeeping and other compliance requirements of the Order, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for compliance with the requirement; and (5) a description of the steps the Commission 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 alternative adopted in the Order and why each one of the other significant alternatives to each of the Commission's decisions which affect small entities was rejected.

**Synopsis of Order**

We note that CALLS submitted both an original and modified proposal. Unless otherwise noted, any reference to the CALLS proposal refers to the modified proposal. CALLS has presented us with an integrated and cohesive proposal that aims to resolve major outstanding issues concerning access charges. In addressing these issues, the CALLS proposal reduces, and in most instances eliminates, implicit subsidies among end-user classes; makes implicit universal service funding in access charges explicit and portable; provides significant benefits to consumers who make few or no long-distance calls; and sets carrier charges at reasonable levels. Because we find that the CALLS proposal resolves these issues in a way that benefits consumers and is pro-competitive and economically efficient, we adopt certain parts of the plan, largely rate structure components, as mandatory for all price cap LECs for the full five years of the plan. As discussed in more detail below, for certain rate-level components of the plan, we adopt it as mandatory on an interim basis. Price cap LECs will be able to choose between having these interim rate-level components apply for the full five years or having their rates reinitialized based on forward-looking economic cost.

The proposal that we adopt provides for the following:

(1) Elimination of the residential presubscribed interexchange carrier charge (PICC);

(2) Increases to the primary residential and single-line business subscriber line charge (SLC) caps, beginning at $4.35 on July 1, 2000, and gradually increasing to $6.50 on July 1, 2003, provided that LECs can justify any increase beyond $5.00;

(3) A review of the SLC rates prior to the increase scheduled for July 1, 2002, including evaluation of forward looking cost information;

(4) Targeting of an X-factor for switched access to switching and switched transport elements;

(5) Creation of a separate X-factor for special access services;

(6) $2.1 billion in reductions to switched access usage rates effective July 1, 2000;

(7) Reduction of the switched access X-factor to the Gross Domestic Product—Price Index (GDP–PI) once specific target rate levels are achieved;

(8) Removal of $650 million in implicit universal service support from access charges, and the creation of an explicit, portable interstate access universal service support mechanism at the same level;

(9) Recovery of LEC universal service contributions directly from end users;

(10) Elimination of minimum usage charges (MUCs) by participating long-distance carriers;

(11) A commitment by participating long-distance carriers to flow through reductions in access rates to residential and business customers over the life of the plan; and

(12) Adjustment of the Lifeline Assistance universal service support mechanism to shield low-income customers from increases in the residential SLC.

As an initial point, the CALLS proposal reduces, and in many cases eliminates, implicit subsidies among customer classes through two means. First, by permitting a greater proportion of the local loop costs of primary residential and single-line business customers to be recovered through the SLC, rather than through the CCL charge and the multi-line business PICC, the CALLS proposal reduces, and in most instances removes, the subsidies associated with both of the latter charges. Second, by permitting participating LECs to deaverage their SLCs once the CCL charge and multi-line business PICCs are eliminated, the CALLS proposal reduces the subsidy that subscribers in low-cost areas provide those in higher cost areas.

The CALLS proposal reduces these subsidies, and keeps rates affordable in high-cost areas, by replacing the subsidies with explicit interstate access universal service support. In section 254(e), Congress stated that federal universal service support should be made explicit. The CALLS proposal identifies and removes $650 million of implicit universal service support in interstate access charges, creates an explicit interstate access universal service support mechanism in this amount to replace the implicit support, and makes interstate access universal service support fully portable among eligible telecommunications carriers. The CALLS proposal conforms with our tentative conclusion in the *Universal Service Seventh Report and Order,* 64 FR 30440, that price cap LECs should reduce their interstate access rates to reflect any increase in explicit high-cost support. In addition, we conclude that this interstate access universal service support mechanism is specific, predictable and sufficient. Moreover, by making universal service support explicit and portable, the interstate access universal service support mechanism should also encourage competitive entry into high-cost areas.

We note that even as the CALLS proposal phases out these subsidies, it maintains several safeguards that ensure that the rates consumers pay for the SLC remain well within a zone of reasonableness. The CALLS proposal maintains an overall cap on the SLC assessed on primary residential and single-line business lines at $6.50, and could set the cap even lower if price cap LECs cannot justify higher increases. Thus, as explained below, CALLS ensures that basic telephone service does not become too expensive. The CALLS proposal also asks the Commission to examine the appropriateness of setting the SLC caps for primary residential and single-line business lines above $5.00 before doing so. In addition, the CALLS proposal provides for additional Lifeline support so that low-income subscribers will not be hurt by increases to the primary residential SLC cap. The CALLS proposal also provides that Lifeline customers will not be assessed universal service charges by price cap LECs.

Low-volume long-distance users also benefit from the CALLS proposal. First, AT&T and Sprint both commit to having no monthly minimum charge on their Basic Schedule for at least three years. Second, both carriers agree to eliminate their PICC pass-through charges for residential and single-line business subscribers in light of the elimination of the PICCs for those customers. Third, in a move that benefits all subscribers, both carriers have agreed to flow through to residential and business customers the savings they realize from the CALLS-related reductions in access charges. We find that these commitments are in the public interest and adopt them as requirements of this Order.

We adopt the CALLS proposal because it accomplishes many objectives that the Commission to date has been unable to achieve in the absence of an industry consensus plan, while providing significant consumer benefits that we would not otherwise be able to ensure on such a wide-scale basis and in such a timely manner. We therefore find the CALLS proposal to be in the public interest. Certainly there is no guarantee that, at the end of the CALLS proposal's five-year term, competition will exist to such a degree that deregulation of access charges for price cap LECs is the next logical step. Nevertheless, the CALLS proposal provides stability during its term and addresses several issues that have served as major obstacles to access charge reform and universal service. We also find the CALLS proposal to be consistent with our market-based approach to regulation.

We approve and adopt the CALLS proposal because it resolves in a manner consistent with the public interest a number of complex, contentious and interrelated issues that stand as a roadblock to a competitive marketplace. The CALLS proposal is a reasonable approach for moving toward the Commission's goals of using competition to bring about cost-based rates, and removing implicit subsidies without jeopardizing universal service. The CALLS proposal is not designed as a permanent solution to all of the issues it addresses; instead, it is a transitional plan that moves the marketplace closer to economically rational competition, and it will enable us, once such competition develops, to adjust our rules in light of relevant market developments. Consequently, as the term of the CALLS proposal nears its end, we envision that the Commission will conduct a proceeding to determine whether and to what degree it can deregulate price cap LECs to reflect the existence of competition. At that time, the Commission can also examine whether the interstate access universal service support mechanism remains sufficient.

The level of access rates, the amount of universal service support in access rates, and the appropriate X-factor have all been subject to contentious proceedings that heretofore have not been resolved despite years devoted to their resolution. For many years, IXCs and consumer groups have argued that access rates are significantly above cost and contain monopoly profits, the amount of which was itself subject to serious debate. Incumbent LECs, on the other hand, have contended that reducing access charges threatened universal service support. This dispute cannot be resolved with exactitude, as setting access charges is at best an imprecise process whose success can be measured only by using a zone of reasonableness. With adoption of the CALLS proposal, we believe that we have achieved a reasonable and appropriate up-front reduction to access rates that addresses the positions of both sides.

The 1996 Act stated that the Commission should create explicit universal service mechanisms that would be secure in a competitive environment. The interstate access universal service support mechanism we create today to replace the implicit universal service support removed from access charges has been subject to heated debate as to the appropriateness of its size and distribution methodology. During the course of the proceeding, some parties have argued that the amount of implicit universal service support in access charges is as high as $3.9 billion, while others have argued that the figure is only $250 million. Determining the amount of implicit universal service support is an imprecise exercise at best. Consequently, it is only today, more than four years after the passage of the 1996 Act, that we issue a decision on this matter.

Similarly, the size of the X-factor has been subject to debate ever since the first time it was set with the creation of price caps. More recently, the current X-factor of 6.5 percent, which was set in 1997, is currently on remand with the Commission. By adopting the reasonable approach set forth in the CALLS proposal, which treats the X-factor not as a productivity estimate but as a method to reduce rates to certain levels, we expect to end the debate over the appropriate size of the X-factor now and for the next five years for participating price cap LECs.

The rates proposed by CALLS are reasonable. We have compared LEC revenues over the five-year period under the modified CALLS proposal with what their revenues would be under the status quo, and conclude that they are roughly the same. Overall LEC revenues are roughly $700 million lower than they would have been for the first year of the plan, but gradually increase in the later years so that projected revenue is higher than the status quo at the end of the plan. We note, however, that these estimates make no adjustment to account for voluntary reductions participating LECs might make in response to the development of competition in the marketplace, something that is much more likely to occur in the later years of the plan, in part due to the reduction of implicit subsidies by the CALLS proposal.

We find that the CALLS proposal provides a number of consumer benefits that are in the public interest. By eliminating the residential PICC, the CALLS proposal provides immediate reductions to consumers' overall rates, even after taking the increase to the primary residential SLC into account. By having IXCs provide calling plans with no monthly minimum charges, CALLS also provides additional benefits to low-volume long-distance customers. In addition, by recovering a greater proportion of loop costs directly from the end user and by creating an explicit and portable interstate access universal service mechanism, the CALLS proposal also promotes the development of greater facilities-based residential competition.

By adopting the CALLS proposal, we require price cap LECs to make a larger rate reduction than they otherwise would have on July 1, 2000. For carriers that elect CALLS, however, we defer the rate prescription scheduled to take place next year that the Commission established as a ''backstop'' to the market-based approach in the event competition was slow to develop. We thereby allow four additional years for competition to develop sufficiently to begin to control access rates.

With one exception that we discuss below, we decline to make any significant modifications to the CALLS proposal as some parties advocate, and instead agree with the CALLS signatories that we should assess the proposal as a whole. In so doing, we note that the original proposal, made by a group of price cap LECs and IXCs but without comment from consumer groups, did not address the interests of consumers as adequately as the modified proposal. In response to the various critiques of the original proposal, CALLS made several pro-consumer changes that resulted in a substantially more equitable proposal. These changes include lowering the primary residential and single-line business SLC caps from the original proposal, both at the start of the plan and throughout its term; proposing a cost review to examine the appropriateness of raising the SLC caps above $5.00; eliminating minimum usage charges for basic long-distance service by CALLS long-distance signatories; and removing a significant amount of revenues from access charges altogether, rather than shifting those permitted revenues to the common line basket.

Although we find the CALLS proposal is reasonable for CALLS signatories and is likely to be reasonable for non-signatory price cap LECs, we recognize that it was developed with the idea that it would be voluntary for price cap LECs. At the same time, however, the benefits of the CALLS proposal could not be fully realized if all price cap LECs did not participate. Because the CALLS proposal is a cohesive proposal, failure to implement it fully would frustrate the consumer benefits we find appropriate for its adoption. Moreover, failure to implement CALLS completely will impede advancement toward the 1996 Act's competition and universal service goals.

We recognize that not all price cap LECs could agree on all aspects of the CALLS proposal. CALLS members worked among themselves to develop the mechanisms under which price cap LECs contribute toward reducing

switched access usage charges by $2.1 billion, as well as the rules that determine the size and distribution of the $650 million interstate access universal service support mechanism. These decisions necessarily pit each price cap LEC's interest against the interests of all other price cap LECs. Consequently, price cap LECs that did not agree to the CALLS proposal might not receive the same benefits or carry the same burdens as the CALLS LEC signatories.

Accordingly, out of an abundance of caution, we provide an opportunity for price cap LECs to choose between two options for certain rate-level, as opposed to rate structure, components of the CALLS proposal. Specifically, price cap LECs may elect CALLS for the full five-year period. Alternatively, price cap LECs may elect to submit a cost study based on forward-looking economic cost that will be the basis for reinitializing rates to the appropriate level. Because a cost study proceeding necessarily requires data specific to the price cap LEC to be submitted and analyzed, we find it necessary to mandate the CALLS rate-level components on an interim basis, subject to true-up, in order to provide sufficient time to complete a cost study. A price cap LEC that elects the second option will be subject to the following rate-level components of the CALLS proposal until we have completed the forward-looking economic cost review: the size of the up-front reduction; the size of the carrier's interstate access universal service support; the X-factor; and the switching target levels. Adopting these components on an interim basis will permit realization of the full consumer benefits of the CALLS proposal and preserve the $2.1 billion reduction in switched access usage charges for the first year.

At the same time, we adopt the rate structure components of the CALLS proposal as mandatory for all price cap LECs, for the five-year period envisioned by the CALLS proposal. The rate structure components are the new SLC caps, elimination of the residential PICC, the multi-line business PICC caps, the creation of a separate basket for special access, elimination of the marketing basket and the recovery of the revenues it recovered as part of CMT revenues, recovery of universal service contributions directly from end users, SLC deaveraging, portability of the interstate access universal service mechanism, and increased Lifeline support to cover the new SLC caps. For the reasons discussed elsewhere in this Order, the changes made in these components are reasonable and in the public interest and consistent with our policy of requiring, to the extent possible, that non-traffic sensitive costs be recovered through fixed rates or flat charges. In addition, these changes do not affect carriers' overall recovery of their costs and thus do not raise the same issues as the rate-level components.

For the rate-level components, each price cap LEC will, at the holding-company level, choose between two options. The first alternative is to subscribe to the CALLS proposal for its full five-year term. The second alternative is to submit a cost study based on forward-looking economic costs, resulting in the LEC's rates being reinitialized to the appropriate level indicated by the study and then made subject to a price cap plan and X-factor that we would determine.

This cost study proceeding is consistent with what we outlined in the *Access Charge Reform Order. See* 62 FR 31868. In the *Access Charge Reform Order*, the Commission stated that its goal was for interstate access charges to reflect the forward-looking economic costs of providing interstate access services. The Commission adopted a two-phased approach to reach that goal. It adopted a market-based approach that relied on competitive pressures to bring prices toward forward-looking economic cost, with incumbent LECs receiving additional pricing flexibility where competition has developed. The second phase provided, however, that the Commission would require forward-looking cost studies by no later than February 8, 2001 for access services that were not subject to competition and ''eventually prescribe rates for those services at forward-looking economic cost levels.'' For those carriers that accept the CALLS proposal, we are extending for five years the period during which we will allow the market-based approach to bring interstate access prices toward forward-looking economic cost. Those carriers that reject the CALLS proposal will operate under the framework the Commission set forth in the *Access Charge Reform Order* to address services that are not subject to substantial competition.

Each price cap LEC will have 60 days from the release of this Order to make its election between the two options. This election will be binding for the five-year term of CALLS. Price cap LECs that elect to proceed with a cost study will be subject to the rules we adopt today until the completion of our cost study proceeding. We make this election binding because we believe the CALLS proposal, coupled with a true-up mechanism discussed below, will ensure reasonable rate levels for all price cap LECs, while ensuring that the Commission does not waste its limited resources in cost proceedings performed solely for the purpose of having LECs determine under which approach they would be better off.

For a price cap LEC electing the cost study option, we also adopt a true-up mechanism to be applied to such price cap LEC's rates. This will enable the LEC and its customers to be treated as it would have been, had we completed the cost study in time to avoid the need for imposing the CALLS proposal for an interim period. Should any price cap LEC elect to participate in the cost study proceeding, the Commission will consider the sufficiency of the interstate access universal service support mechanism, including both the size and distribution of support, concurrently with the industry-wide review of the increase to the primary residential SLC cap after July 2001, to avoid duplication of effort.

**Final Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the CALLS NPRM, and revised in the Public Notice requesting comment on the modified CALLS proposal. The Commission sought written public comment on the proposals in the CALLS NPRM and the CALLS proposal, including comments on the IRFAs. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended. To the extent that any statement in this FRFA is perceived as creating ambiguity with respect to our rules or statements made in preceding sections of this Order, the rules and statements set forth in those preceding sections shall be controlling.

**Need for and Objectives of This Order**

The CALLS members offer the proposal as a comprehensive solution to the members' access charge, universal service, and price cap concerns. The CALLS plan would revise the current system of common line charges by combining existing carrier and subscriber charges into one flat-rated subscriber line charge (SLC), and would provide for limited deaveraging of those charges under specific conditions. The CALLS plan also would establish an interstate access universal service support mechanism that provides explicit support to replace support currently implicit in interstate access charges. In addition, the CALLS plan calls for annual reductions in traffic

sensitive switching access rates until they reach a specified level.

We believe that the CALLS proposal is in the public interest, and so adopt it to the extent discussed in this Order. This Order agrees with the CALLS members that the CALLS proposal is the result of certain segments of the telecommunications industry developing a comprehensive approach to resolve outstanding issues concerning access charges and universal service. By adopting the CALLS proposal, this Order will result in lower rates for both low-volume and high-volume long-distance consumers, more competition, greater flexibility for price cap LECs to meet competition, and an explicit, portable interstate access universal service support mechanism. It is the CALLS proposal's comprehensive solution of historically contentious issues that allows the Commission to take these actions while ensuring that consumers in high-cost areas will continue to have affordable service.

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

The Commission received no comments addressing the IRFA. We did, however, receive some general small-business-related comments. Some commenters request that the CALLS proposal require a proportionate share of the agreed upon local switching rate reductions to come from tandem-switched rates. Other commenters argue that the CALLS proposal should have a separate X-factor for mid-size price cap LECs. These comments are addressed in detail in this Order.

*Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

The SBA has defined a small business for Standard Industrial Classification (SIC) category 4813 (Telephone Communications, Except Radiotelephone) to be a small entity that has no more than 1500 employees.

*Total Number of Telephone Companies Affected*

*Price Cap Local Exchange Carriers.* The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of price cap LECs that would qualify as small business concerns under the SBA's definition. However, there are currently only 13 price cap LECs, four of which share common ownership. Consequently, significantly fewer than 13 providers of local exchange service are estimated to be small entities or small price cap LECs that may be affected by these proposals. We have included small price cap LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small price cap LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small price cap LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

*Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a definition of small providers of local exchange service. The closest applicable definition under SBA rules is for telephone telecommunications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of competitive LECs nationwide of which the Commission is aware appears to be the data that the Commission collects annually in connection with the Telecommunications Relay Service (TRS). According to the Commission's most recent data, 129 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. The Commission does not have data specifying the number of these carriers that are either dominant in their field of operations, are not independently owned and operated, or have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of competitive LECs that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that fewer than 129 providers of local exchange service are small entities or small competitive LECs that may be affected by these proposals.

*Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements*

It is not clear whether, on balance, the CALLS proposal will increase or decrease price cap incumbent local exchange carriers' administrative burdens. Some of the rate structure reforms in the CALLS proposal will require additional filings. In particular, the CALLS proposal requires price cap LECs to file with USAC additional information pertaining to line counts by zone and customer class, revenue data, and information regarding zone boundaries. Competitive LECs would also have to file with USAC line counts by zone and customer class. The filings are on a quarterly basis. On the other hand, other reforms in the CALLS proposal, such as the elimination of the PICC, should reduce administrative burdens for price cap LECs. Finally, some of the reforms in the CALLS proposal may have a neutral affect on administrative burdens. For example, under the CALLS proposal, implicit subsidies now collected by price cap LECs from IXCs through access charges will be collected as explicit subsidies from USAC. This reform should neither increase nor decrease the administrative burden for price cap LECs.

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

The proposals made by CALLS could have varying positive or negative impacts on price cap LECs, including any such small carriers. The alternative to consideration of adopting the CALLS proposal at this time would be to continue in effect the existing access charge and universal service fund rules. Neither this alternative, nor any other identified by the Commission, would lessen the significant economic impact on small entities while remaining consistent with this Order's objectives.

Several commenters, while not directly responding to our IRFA, did raise general small-business-related concerns. Commenters concerned about protecting smaller IXCs in competition with large IXCs request that the CALLS proposal require a proportionate share of the agreed upon local switching rate reductions to come from tandem-switched rates. This Order explains,

however, that (1) competition in the long-distance market eliminates the need for rules protecting smaller IXCs, and (2) even if price cap LECs target their access rate reductions only to direct-trunked transport, these reductions should make direct-trunked transport an affordable alternative for smaller IXCs. Other commenters argue that the CALLS proposal should have a separate X-factor for mid-size price cap incumbent LECs because these carriers are not able to achieve the same levels of productivity growth as larger LECs. As this Order explains, however, the X-factor adopted under the CALLS proposal is not a productivity offset, but is merely a method to reduce traffic sensitive charges to the Proposal's target level.

This Order makes two allowances for smaller price cap LECs. First, the Order allows a higher target access rate for smaller and very low-density price cap LECs. Whereas the target for the BOCs and GTE is set at 0.55 cents, the target is 0.95 cents for small very-low density price cap LECs and 0.65 cents for the other smaller price cap LECs. Second, the Order allows mid-size price cap carriers with at least 20 percent of total holding company lines serving statutorily rural areas to pool their access charge reductions and to temporarily recover them from sources other than residential end users and per-minute charges.

*Report to Congress*

The Commission will send a copy of this Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of this Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

*Paperwork Reduction Act*

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements have been approval by OMB as prescribed by the Act, and will go into effect upon publication in the **Federal Register**.

Pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154 (i), 154(j), 201–209, 218–222, 254, and 403 that this Order *Is Hereby Adopted.*

We, therefore, *Order* that the Inquiry initiated in CC Docket 99–249 is hereby *Terminated.* This action is taken pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 303.

The Commission's Consumer Information Bureau, Reference Information Center, Shall Send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Pursuant to 5 U.S.C. 553(d)(3), we find good cause exists to have the rules take effect immediately upon publication in the **Federal Register**. Local exchange carriers subject to price cap regulation must file access reform tariffs no later than June 16, 2000 in order for them to be effective by July 1, 2000, as required by 47 CFR 69.3. In addition, to ensure that the local exchange carriers subject to price cap regulation have actual notice of these rules immediately following their release, we are serving those entities by overnight mail.

**List of Subjects**

*47 CFR Part 54*

Reporting and recordkeeping requirements, Telecommunications, Telephone.

*47 CFR Part 61*

Access charges, Communications common carriers, Telephone.

*47 CFR Part 69*

Communications common carriers, Telephone.

Federal Communications Commission.

**William F. Caton,**

*Deputy Secretary.*

**Regulatory Text**

For the reasons set forth in the preamble, the Federal Communications Commission amends 47 CFR parts 54, 61, and 69 as follows:

## PART 54—UNIVERSAL SERVICE

1. The authority citation for part 54 continues to read as follows:

**Authority:** Secs. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.403 by removing paragraph (d) and revising paragraphs (a) and (b) to read as follows:

**§ 54.403 Lifeline support amount.**

(a) The federal Lifeline support amount for all eligible telecommunications carriers shall equal:

(1) *Tier One.* The tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or §§ 69.152(d)(1) and 69.152(q) of this chapter, whichever is applicable;

(2) *Tier Two.* If the state commission approves an additional reduction of $1.75 in the amount paid by consumers, additional federal Lifeline support in the amount of $1.75 will be made available to the carrier providing Lifeline service to that consumer; and

(3) *Tier Three.* Additional federal Lifeline support in an amount equal to one-half the amount of any state Lifeline support will be made available to the carrier providing Lifeline service to a qualifying low-income consumer if the state commission approves an additional reduction in the amount paid by that consumer equal to the state support multiplied by 1.5.

(b) For the qualifying low-income consumer, the federal Lifeline support amount shall not exceed $3.50 plus the tariffed rate in effect for the primary residential End User Common Line charge of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service, as determined in accordance with § 69.104 or §§ 69.152(d)(1) and 69.152(q) of this chapter, whichever is applicable. Eligible telecommunications carriers that charge federal End User Common Line charges or equivalent federal charges shall apply Tier One federal Lifeline support to waive Lifeline consumers' federal End User Common Line charges. Such carriers shall apply any additional federal support amount to a qualifying low-income consumer's intrastate rate, if the state has approved of such additional support. Other eligible telecommunications carriers shall apply Tier One federal Lifeline support amount, plus any additional federal support amount, to reduce their lowest tariffed (or otherwise generally available) residential rate for the services enumerated in § 54.101(a)(1) through (a)(9), and charge Lifeline consumers the resulting amount.

* * * * *

3. Amend § 54.701 by revising paragraph (g) to read as follows:

**§ 54.701 Administrator of universal service support mechanism.**

* * * * *

(g)(1) The Administrator shall establish three divisions:

(i) the Schools and Libraries Division, which shall perform duties and

functions in connection with the schools and libraries support mechanism under the direction of the Schools and Libraries Committee of the Board, as set forth in § 54.705(a);

(ii) The Rural Health Care Division, which shall perform duties and functions in connection with the rural health care support mechanism under the direction of the Rural Health Care Committee of the Board, as set forth in § 54.705(b); and

(iii) The High Cost and Low Income Division, which shall perform duties and functions in connection with the high cost and low income support mechanism, and the interstate access universal service support mechanism described in subpart J of this part, under the direction of the High Cost and Low Income Committee of the Board, as set forth in § 54.705(c).

(2) As directed by the Committees of the Board set forth in § 54.705, these divisions shall perform the duties and functions unique to their respective support mechanisms.

* * * * *

4. Amend § 54.702 by revising paragraphs (a) and (i) to read as follows:

**§ 54.702 Administrator's functions and responsibilities.**

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high cost support mechanism, the low income support mechanism, and the interstate access universal service support mechanism described in subpart J of this part.

* * * * *

(i) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, interstate access universal service support, and high cost and insular areas.

* * * * *

5. Amend § 54.705 by revising paragraph (c)(1) to read as follows:

**§ 54.705 Committees of the Administrator's Board of Directors.**

* * * * *

(c) * * *

(1) *Committee functions.* The High Cost and Low Income Committee shall oversee the administration of the high-cost and low-income support mechanisms and the interstate access universal service support mechanism described in subpart J of this Part, by the High Cost and Low Income Division. The High Cost and Low Income Committee shall have the authority to make decisions concerning:

(i) How the Administrator projects demand for the high-cost, low-income, and interstate access universal service support mechanisms;

(ii) Development of applications and associated instructions as needed for the high-cost, low-income, and interstate access universal service support mechanisms;

(iii) Administration of the application process, including activities to ensure compliance with Federal Communications Commission rules and regulations;

(iv) Performance of audits of beneficiaries under the high-cost, low-income, and interstate access universal service support mechanisms and;

(v) Development and implementation of other functions unique to the high-cost, low-income, and interstate access universal service support mechanisms.

* * * * *

6. Amend § 54.715 by revising paragraph (c) to read as follows:

**§ 54.715 Administrative expenses of the Administrator.**

* * * * *

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, the low-income support mechanism, and the interstate access universal service support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

7. Add subpart J to part 54 to read as follows:

## Subpart J—Interstate Access Universal Service Support Mechanism

Sec.

54.800 Terms and definitions.
54.801 General.
54.802 Obligations of LECs and the Administrator.
54.803 Universal service zones.
54.804 Preliminary study area minimum access universal service support calculated by the Administrator.
54.805 Zone and study area above benchmark revenues calculated by the Administrator.
54.806 Calculation by the Administrator of interstate access universal service support for areas served by price cap LECs.
54.807 Interstate access universal service support.
54.808 Transition provisions and periodic calculation.
54.809 Carrier certification.

## Subpart J—Interstate Access Universal Service Support Mechanism

**§ 54.800 Terms and definitions.**

(a) *Average Price Cap CMT Revenue Per Line Month in a Study Area* has the same meaning as that term is defined in § 61.3(d) of this chapter, except that it includes exogenous changes in effect prior to the effective date of a calculation made pursuant to § 54.808 and exogenous changes not yet effective related to the sale or acquisition of exchanges, but excludes any other exogenous changes or other changes made pursuant to § 61.45(i)(4) of this chapter that are not yet effective.

(b) *Base Period Lines.* For purposes of calculations pursuant to this subpart, Base Period Lines are the number of lines for a given study area or zone as of the end of the quarter ending 6 months prior to the effective date of a calculation pursuant to § 54.808.

(c) *Interstate Access Universal Service Support Benchmark* shall mean, for residential and single-line business lines, $7.00, and for multi-line business lines, $9.20.

(d) *Minimum Adjustment Amount (MAA)* is defined in § 54.806(f).

(e) *MAA Phase In Percentage* is:

50% as of July 1, 2000,

75% as of July 1, 2001,

100% as of July 1, 2002.

(f) *Minimum Delta (MD)* is defined in § 54.806(d).

(g) *Minimum Support Requirement (MSR)* is defined in § 54.806(g).

(h) *Nationwide Total Above Benchmark Revenues* is defined in § 54.806(b).

(i) *Price Cap LEC* is defined in § 54.802(c).

(j) *Preliminary Study Area Minimum Access Universal Service Support* is the amount calculated pursuant to § 54.804.

(k) *Preliminary Study Area Universal Service Support (PSAUSS)* is defined in § 54.806(c).

(l) *Study Area Above Benchmark Revenues* is the sum of all Zone Above Benchmark Revenues for all zones in the study area.

(m) *Study Area Access Universal Service Support (SAAUS)* is defined in § 54.806 (i) and (j).

(n) *Total National Minimum Delta (TNMD)* is the nationwide sum of all study area Minimum Deltas.

(o) *Total National Minimum Support Requirement (TNMSR)* is the sum of the MSR for all price cap LEC study areas.

(p) *Zone Above Benchmark Revenues* is defined in § 54.805(a)(2).

(q) *Zone Average Revenue per Line.* The amount calculated as follows:

Zone Average Revenue Per Line = (25% * (Loop + Port)) + U (Uniform revenue per line adjustment)

Loop = Price for the loop in a particular zone.

Port = Price for the port in a particular zone.

U = [(Average Price Cap CMT Revenue Per Line Month in a study area * LEC Base Period Lines) − (25% * Σ (LEC Base Period Lines in a UNE Zone × ((Loop + Port ) for all zones)))] ÷ LEC Base Period Lines in a study area.

### § 54.801 General.

(a) The total amount of universal service support under this subpart, excluding administrative expenses, for areas served by price cap LECs as of June 30, 2000, is targeted to be $650 million per year, if no exchanges, other than those offered for sale prior to January 1, 2000, are sold to non-price-cap LECs or purchased from non-price cap LECs by price cap LECs.

(b) In the event that all or a portion of a study area served by a price cap LEC is sold to an entity other than a price cap LEC, and the study area or portion thereof was not offered for sale prior to January 1, 2000, then the support that would otherwise be provided under this subpart, had such study area or portion thereof not been sold, will not be distributed or collected. Subsequent calculations will use the last reported data for the study area or portion thereof that was sold to determine the amount that will not be distributed or collected.

(c) In the event that a price cap LEC acquires additional exchanges, from an entity other than a price cap LEC, that acquisition should be reported to the Administrator pursuant to § 54.802 and included in the determination of study area support pursuant to § 54.806 for the areas served by the acquiring price cap LEC, beginning with the next support recalculation pursuant to § 54.808.

(d) In the event that a price cap LEC acquires additional exchanges from an entity that is also a price cap LEC, the acquiring price cap LEC will receive support under this subpart at the same level as the selling price cap LEC formerly received, and both carriers will adjust their line counts accordingly beginning with the next quarterly report to the Administrator. At the subsequent report to the Administrator for purposes of recalculating support as required by § 54.808, the acquiring and selling price cap LECs will reflect the acquired and sold lines, and will adjust the average CMT Revenue per Line per Month for the affected study areas accordingly.

(e) The Administrator for the fund created by this subpart shall be the Universal Service Administrative Company.

### § 54.802 Obligations of LECs and the Administrator.

(a) Each Eligible Telecommunications Carrier that is providing service within an area served by a price cap LEC shall submit to the Administrator, on a quarterly basis on the last business day of March, June, September, and December of each year line count data showing the number of lines it serves for the period ending three months prior to the reporting date, within each price cap LEC study area disaggregated by UNE Zone if UNE Zones have been established within that study area, showing residential/single-line business and multi-line business line counts separately. For purposes of this report, and for purposes of computing support under this subpart, the aggregated residential/single-line business class lines reported include single and non-primary residence lines, single-line business lines, ISDN BRI and other related residence class lines. Similarly, the multi-line business class lines reported include multi-line business, centrex, ISDN PRI and other related business class lines assessed the End User Common Line charge pursuant to § 69.152 of this chapter. For purposes of this report and for purposes of computing support under this subpart, lines served using resale of the price cap LEC's service pursuant to section 251(c)(4) of the Communications Act of 1934, as amended, shall be considered lines served by the price cap LEC only and must be reported accordingly.

(b) In addition to the information submitted pursuant to paragraph (a) of this section, each price cap LEC must submit to the Administrator, on June 30, 2000, October 15, 2000, and April 16, 2001 and annually thereafter or as determined by the Administrator according to § 54.808:

(1)(i) Average Price Cap CMT Revenue Per Line Month in a study area for each of its study areas;

(ii) The rates established for UNE Loops and UNE Line Ports, by zone in those study areas where UNE Zones have been established as of the date of filing; and

(iii) Make available information sufficient to determine the boundaries of each UNE Zone within each of its study areas where such zones have been established;

(2) Provided, however, that after the June 30, 2000 filing, if there have been no changes since its previous filing a company may submit a statement that there have been no changes in lieu of such information, and further provided that, for study areas in which UNE Zones have been newly established since the last filing pursuant to this paragraph, the price cap LEC shall also report the information required by paragraphs (b)(1)(ii) and (b)(1)(iii) of this section to the Administrator on July 15, 2000, or January 15, 2001, as required.

(c) An eligible telecommunications carrier shall be eligible for support pursuant to this subpart only after it has filed all of the information required by paragraphs (a) through (c) of this section, where applicable. An eligible telecommunications carrier shall receive payment of support pursuant to this subpart only for such months the carrier is actually providing service to the end user. The Administrator shall ensure that there is periodic reconciliation of support payments.

(d) Upon receiving the information required to be filed in paragraphs (a) and (b) of this section, the Administrator shall:

(1) Perform the calculations described in §§ 54.804 through 54.807 of this subpart;

(2) Publish the results of these calculations showing Interstate Access Universal Service Support Per Line available in each price cap LEC study area, by UNE Zone and customer class;

(3) Collect the funds necessary to provide support pursuant to this subpart in accordance with subpart H; and

(4) Distribute support calculated pursuant to the rules contained in this subpart; and;

(5) Report quarterly to the Commission on the collection and distribution of funds under this subpart as described in § 54.701(g). Fund distribution reporting will be by state and by eligible telecommunications carrier within the state.

### § 54.803 Universal service zones.

(a) The zones used for determining interstate access universal service

support shall be the same zones that would be used for End User Common Line (EUCL) charge deaveraging as described in § 69.152(q)(2) of this chapter.

(b) In a price cap study area where the price cap LEC has not established state-approved prices for UNE loops by zone, the Administrator shall develop an estimate of the LEC's Zone Above Benchmark Revenues for transitional purposes, in order to reserve a portion of the fund for that study area. This estimate will be included by the Administrator in the Nationwide Study Area Above Benchmark Revenues calculated pursuant to § 54.806.

(1) For the purpose of developing this transitional estimate, the loop and port costs estimated by the FCC cost model, or other substitute method if no model is available, shall be used.

(2) For the purpose of developing this transitional estimate, the administrator shall construct three zones. Wire centers within the study area will be grouped into these zones in such a way that each zone is assigned approximately one third of LEC base period lines in the study area, with the lowest cost wire centers assigned to Zone 1, the highest cost wire centers assigned to Zone 3, and the remainder to Zone 2.

**§ 54.804 Preliminary study area minimum access universal service support calculated by the Administrator.**

(a) If Average Price Cap CMT Revenue Per Line Month is greater than $9.20 then: Preliminary Minimum Access Universal Service Support (for a study area) = Price Cap CMT Revenue Per Line Month in a study area × LEC Base Period Lines × 12) − (($7.00 × LEC Base Period Residential and Single-Line Business Lines × 12) + ($9.20 × LEC Base Period Multi-line Business Lines × 12)).

(b) If Price Cap CMT Revenue Per Line Month in a study area is greater than $7.00 but less than $9.20 then: Preliminary Minimum Access Universal Service Support (for a study area) = (Price Cap CMT Revenue Per Line Month in a study area − $7.00) × (LEC Base Period Residential and Single-Line Business Lines × 12).

(c) If Price Cap CMT Revenue Per Line Month in a study area is less than $7.00 then the Preliminary Minimum Access Universal Service Support (for a study area) is zero.

**§ 54.805 Zone and study area above benchmark revenues calculated by the Administrator.**

(a) The following steps shall be performed by the Administrator to determine Zone Above Benchmark Revenues for each price cap LEC.

(1) Calculate Zone Average Revenue Per Line.

(2) Calculate Zone Above Benchmark Revenues. Zone Above Benchmark Revenues is the sum of Zone Above Benchmark Revenues for Residential and Single-Line Business Lines and Zone Above Benchmark Revenues for Multi-line Business Lines Zone Above Benchmark Revenues for Residential and Single-Line Business Lines is, within each zone, (Zone Average Revenue Per Line minus $7.00) multiplied by all eligible telecommunications carrier Base Period Residential and Single-Line Business Lines times 12. If negative, the Zone Above Benchmark Revenues for Residential and Single-Line Business Lines for the zone is zero. Zone Above Benchmark Revenues for Multi-line Business Lines is, within each zone, (Zone Average Revenue Per Line minus $9.20) multiplied by all eligible telecommunications carrier zone Base Period Multi-line Business Lines times 12. If negative, the Zone Above Benchmark Revenues for Multi-line Business Lines for the zone is zero.

(b) Study Area Above Benchmark Revenues is the sum of Zone Above Benchmark Revenues for all zones in the study area.

**§ 54.806 Calculation by the Administrator of interstate access universal service support for areas served by price cap LECs.**

(a) The Administrator, based on the calculations performed in §§ 54.804 and 54.805, shall calculate the Interstate Access Universal Service Support for areas served by price cap LECs according to the following methodology:

(b) Calculate Nationwide Total Above Benchmark Revenues. Nationwide Total Above Benchmark Revenues is the sum of all Study Area Above Benchmark Revenues for all study areas served by LECs,

(c) Calculate Preliminary Study Area Universal Service Support (PSAUSS).

(1) If the Nationwide Total Above Benchmark Revenues is greater than $650 million, then the Preliminary Study Area Universal Service Support (PSAUSS) equals the Study Area Above Benchmark Revenues multiplied by the ratio of $650 million to Nationwide Total Above Benchmark Revenues (*i.e.,* Preliminary Study Area Universal Service Support = Study Area Above Benchmark Revenues × ($650 Million/ Nationwide Total Above Benchmark Revenues).

(2) If the Nationwide Total Above Benchmark Revenues is not greater than $650 million, PSAUSS equals the Study Area Above Benchmark Revenues.

(d) Calculate the Minimum Delta (MD) by study area. Within each study area the Minimum Delta will be equal to the Preliminary Minimum Access Universal Service Support less the PSAUSS, if the difference is greater than zero. If the difference is less than or equal to zero, the MD is equal to zero.

(e) Calculate the Total National Minimum Delta (TNMD) by summing all study are Minimum Deltas nationwide.

(f) Calculate the Minimum Adjustment Amount. (1) If the TNMD is greater than $75 million, then the Minimum Adjustment Amount product of the (MAA) equals the MAA Phase In Percentage times the MD by study area times the ratio of $75 million to TNMD Or:

Minimum Adjustment Amount = (MAA Phase in Percentage) × (Minimum Delta) × ($75 million / Total National Minimum Delta).

(2) If the TNMD is less than $75 million, then the MAA equals the product of the MAA Phase In Percentage and the MD by study area.

(g) Calculate the Minimum Support Requirement (MSR). The Minimum Support Requirement for a study area equals the PSAUSS plus the MAA.

(h) Calculate the Total National Minimum Support Requirement (TNMSR), which equals the sum of the MSR for all study areas in which the Preliminary Minimum Access Universal Service Support is greater than or equal to the PSAUSS.

(i) Calculate Study Area Access Universal Service Support (SAAUS) for a study area in which the price cap LEC has geographically deaveraged state-approved rates for UNE loops:

(1) For study areas in which the Preliminary Minimum Access Universal Service Support is greater than PSAUSS, and within which the price cap LEC has established geographically deaveraged state-approved rates for UNE loops, the SAAUS for that study area is the MSR.

(2) For study areas in which the Preliminary Minimum Access Universal Service Support is less than PSAUSS, and within which the price cap LEC has established geographically deaveraged state-approved rates for UNE loops, the SAAUS for that study area is equal to:

Preliminary Study Area Universal Service Support × ($650 million − TNMSR) ÷ (the sum of PSAUSS of study areas where the Preliminary Minimum Access Universal Service Support is less than PSAUSS).

(j) Calculate Study Area Access Universal Service Support (SAAUS) for a price cap LEC that has not established geographically deaveraged state-

approved rates for UNE loops. In such study areas, the SAAUS shall be the lesser of the Preliminary Minimum Access Universal Service Support or:

(1) For study areas in which the Preliminary Minimum Access Universal Service Support is greater than PSAUSS, and for which an estimate has been made for deaveraged UNE loop costs, the SAAUS for that study area is the MSR.

(2) For study areas in which the Preliminary Minimum Access Universal Service Support is less than PSAUSS, and for which an estimate has been made for deaveraged UNE loop costs, the SAAUS for that study area is equal to:

Preliminary Study Area Universal Service Support × ($650 million − TNMSR) ÷ (the sum of PSAUSS of study areas where the Preliminary Minimum Access Universal Service Support is less than PSAUSS).

**§ 54.807 Interstate access universal service support.**

(a) Each Eligible Telecommunication Carrier (ETC) that provides supported service within the study area of a price cap LEC shall receive Interstate Access Universal Service Support for each line that it serves within that study area.

(b) In any study area within which the LEC has not established state approved geographically deaveraged rates for UNE loops, the Administrator shall calculate the Interstate Access Universal Service Support Per Line by dividing Study Area Access Universal Service Support by twelve times all eligible telecommunications carriers' base period lines in that study area adjusted for growth during the relevant support period based on the average nationwide annual growth in eligible lines during the three previous years. For the purpose of calculating growth, the Administrator shall use a simple average of annual growth rates for total switched access lines for the three most recent years as reported in the Common Carrier Bureau Report, Statistics of Communications Common Carriers, Table 6.10—Selected Operating Statistics. Interested parties may obtain this report from the U.S. Government Printing Office or by downloading it from the Federal Communication Commission's website http://www.fcc.gov.

(c) In any study area within which the LEC has established state approved geographically deaveraged rates for UNE loops, the Administrator shall calculate the Interstate Access Universal Service Support Per Line for each customer class and zone using all eligible telecommunications carriers' base period lines by customer class and zone adjusted for growth during the relevant support period based on the average nationwide annual growth in eligible lines during the three previous years. For the purpose of calculating growth, the Administrator shall use a simple average of annual growth rates for total switched access lines for the three most recent years as reported in the Common Carrier Bureau Report, Statistics of Communications Common Carriers, Table 6.10—Selected Operating Statistics. Support shall be allocated to lines in the highest cost UNE zone first, and will ''cascade'' to lines in lower cost UNE zones to the extent that sufficient funding is available. Beginning with the zone with the highest Zone Average Revenue Per Line, support will be applied in the following order of priority:

(1) To all lines in the highest zone, to eliminate the amount per line by which Zone Average Revenue Per Line exceeds the higher of $9.20 or the Average Revenue Per Line in the next highest zone;

(2) If the Zone Average Revenue Per Line in the next highest zone is greater than $9.20, then to all lines in both zones to eliminate the amount per line by which Zone Average Revenue per Line exceeds $9.20 or the Zone Average Revenue Per Line in the third highest zone. This application of support will continue to additional zones in the same fashion until the amount per line by which Zone Average Revenue Per Line exceeds $9.20 has been eliminated in all zones, or until the available support has been exhausted;

(3) To all residential and single-line business lines in the highest zone, to eliminate the remaining amount per line that Zone Average Revenue Per Line for these lines exceeds the higher of $7.00 or Zone Average Revenue Per Line in the next highest zone;

(4) If the Zone Average Revenue per Line in the next highest zone is greater than $7.00, then to all residential and single-line business lines in both zones to eliminate the remaining amount per line by which Zone Average Revenue Per Line exceeds $7.00. This application of support will continue to additional zones in the same fashion until the difference between Zone Average Revenue Per Line and $7.00 has been eliminated in all zones, or until the available support has been exhausted.

(d) Notwithstanding the provisions of § 54.307(a)(2), the per-line support amount determined within each zone by applicable customer class under paragraph (b) or (c) of this section is portable among all eligible telecommunications carriers providing service within that zone.

**§ 54.808 Transition provisions and periodic calculation.**

Study Area Access Universal Service Support amounts for the area served by each price cap LEC will be calculated as of July 1, 2000, January 1, 2001, July 1, 2001 and thereafter as determined by the Administrator, but at least annually.

**§ 54.809 Carrier certification.**

*(a) Certification.* Carriers that desire to receive support pursuant to § 54.807 must file a certification with the Administrator and the Commission stating that all interstate access universal service support provided to such carrier will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to § 54.807 shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

*(b) Certification format.* A certification pursuant to this section may be filed in the form of a letter from an authorized representative for the carrier, and must be filed with both the Office of the Secretary of the Commission clearly referencing CC Docket No. 96–45, and with the Administrator of the interstate access universal service support mechanism, on or before the filing deadlines set forth in paragraph (c) of this section. All of the certifications filed by carriers pursuant to this section shall become part of the public record maintained by the Commission.

*(c) Filing deadlines.* In order for a price cap local exchange carrier, and/or an eligible telecommunications carriers serving lines in the service area of a price cap local exchange carrier, to receive interstate access universal service support, such carrier must file an annual certification, as described in paragraph (b) of this section, on the date that it first files its line count information pursuant to § 54.802, and thereafter on June 30th of each year.

## PART 61—TARIFFS

8. The authority citation for part 61 continues to read as follows:

**Authority:** Secs.1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 151(i), 154(j), 201–205 and 403, unless otherwise noted.

9. Amend § 61.3 by revising paragraphs (d) through (pp) and adding paragraphs (qq) through (zz) to read as follows:

**§ 61.3 Definitions.**

* * * * *

*(d) Average Price Cap CMT Revenue per Line month.* (1) Price Cap CMT Revenue (as defined in § 61.3(cc)) per month as of July 1, 2000 (adjusted to remove Universal Service Contributions assessed to LECs pursuant to § 54.702 of this chapter) using 2000 annual filing base period demand, divided by the 2000 annual filing base period demand. In filing entities with multiple study areas, if it becomes necessary to calculate the Average Price Cap CMT Revenue Per Line month for a specific study area, then the Average Price Cap CMT Revenue Per Line month for that study area is determined as follows, using base period demand revenues (adjusted to remove Universal Service Contributions assessed to Local Exchange Carriers pursuant to § 54.702 of this chapter), Base Factor Portion (BFP) and 2000 annual filing base period lines:

*Average Price Cap CMT Revenue Per Line Month in a study area = Price Cap CMT Revenue × (BFP in the study area ÷ (BFP in the Filing Entity) ÷(Lines in the study area.*

(2) Nothing in this definition precludes a price cap local exchange carrier from continuing to average rates across filing entities containing multiple study areas, where permitted under existing rules.

(3) Average Price Cap CMT Revenues Per Line month may be adjusted after July 1, 2000 to reflect exogenous costs pursuant to § 61.45(d).

(4) Average Price Cap CMT Revenues Per Line month may also be adjusted pursuant to § 61.45 (b)(1)(iii).

(e) Average traffic sensitive charge. (1) The Average Traffic Sensitive Charge (''ATS charge'') is the sum of the following two components:

(i) *The Local Switching (LS) component.* The Local Switching component will be calculated by dividing the proposed Local Switching revenues (End Office Switch, LS trunk ports, Information Surcharge, and signalling transfer point (STP) port) by the base period LS minutes of use (MOUs); and

(ii) *The Transport component.* The Transport component will be calculated by dividing the proposed Transport revenues (Switched Direct Trunk Transport, Signalling for Switched Direct Trunk Transport, Entrance Facilities for Switched Access traffic, Tandem Switched Transport, Signalling for Tandem Switching and residual per minute Transport Interconnection Charge (TIC) pursuant to § 69.155 of this chapter by LEC only base period MOUs (including meet-point billing arrangements for jointly-provided interstate access by a LEC and any other LEC).

(2) For the purposes of determining whether the ATS charge has reached the Target Rate as set forth in § 61.3(qq), the calculations should include all the relevant revenues and minutes for services provided under generally available price cap tariffs.

(f) *Band.* A zone of pricing flexibility for a service category, which zone is calculated pursuant to § 61.47.

(g) *Base period.* For carriers subject to §§ 61.41 through 61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs. Base year or base period earnings shall exclude amounts associated with exogenous adjustments to the PCI for the lower formula adjustment mechanism permitted by § 61.45(d)(1)(vii).

(h) *Basket.* Any class or category of tariffed service or charge:

(1) Which is established by the Commission pursuant to price cap regulation;

(2) The rates of which are reflected in an Actual Price Index; and

(3) The related revenues of which are reflected in a Price Cap Index.

(i) *Change in rate structure.* A restructuring or other alteration of the rate components for an existing service.

(j) *Charges.* The price for service based on tariffed rates.

(k) *Commercial contractor.* The commercial firm to whom the Commission annually awards a contract to make copies of Commission records for sale to the public.

(l) *Commission.* The Federal Communications Commission.

(m) Concurring carrier. A carrier (other than a connecting carrier) subject to the Act which concurs in and assents to schedules of rates and regulations filed on its behalf an issuing carrier or carriers.

(n) *Connecting carrier.* A carrier engaged in interstate or foreign communication solely through physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control with, such carrier.

(o) *Contract-based tariff.* A tariff based on a service contract entered into between a non-dominant carrier and a customer, or between a customer and a price cap local exchange carrier which has obtained permission to offer contract-based tariff services pursuant to part 69, subpart H, of this chapter.

(p) *Corrections.* The remedy of errors in typing, spelling, or punctuation.

(q) *Dominant carrier.* A carrier found by the Commission to have market power (*i.e.,* power to control prices).

(r) *GDP Price Index (GDP–PI).* The estimate of the Chain–Type Price Index for Gross Domestic Product published by the United States Department of Commerce, which the Commission designates by Order.

(s) *GNP Price Index (GNP–PI).* The estimate of the ''Fixed-Weighted Price Index for Gross National Product, 1982 Weights'' published by the United States Department of Commerce, which the Commission designates by Order.

(t) *Issuing carrier.* A carrier subject to the Act that publishes and files a tariff or tariffs with the Commission.

(u) *Line month.* Line demand per month multiplied by twelve.

(v) *Local exchange carrier.* Any person that is engaged in the provision of telephone exchange service or exchange access as defined in section 3(26) of the Act.

(w) *Mid-size company.* All price cap LECs other than the Regional Bell Operating Companies and GTE.

(x) *New service offering.* A tariff filing that provides for a class or sub-class of service not previously offered by the carrier involved and that enlarges the range of service options available to ratepayers.

(y) *Non-dominant carrier.* A carrier not found to be dominant.

(z) *Other participating carrier.* A carrier subject to the Act that publishes a tariff containing rates and regulations applicable to the portion or through service it furnishes in conjunction with another subject carrier.

(aa) *Price cap LEC. See* § 61.41(a) of this section.

(bb) *Local switching pooled Revenue.* For certain qualified companies as set forth in § 61.48 (m), is the amount of additional local switching reductions in the July 2000 Annual filing allowed to be moved and recovered in the common line basket.

*(cc) Price Cap CMT Revenue.* The maximum total revenue a filing entity would be permitted to receive from End User Common Line charges under § 69.152 of this chapter, Presubscribed Interexchange Carrier charges (PICCs) under § 69.153 of this chapter, Carrier Common Line charges under § 69.154 of this chapter, and Marketing under § 69.156 of this chapter, using Base Period lines. Price Cap CMT Revenue does not include the price cap LEC universal service contributions as of July 1, 2000. The Price Cap CMT revenue does not include the pooled local switching revenue outlined in paragraph (bb) of this section.

*(dd) Price Cap Index (PCI).* An index of prices applying to each basket of services of each carrier subject to price cap regulation, and calculated pursuant to § 61.45.

*(ee) Price cap regulation.* A method of regulation of dominant carriers provided in §§ 61.41 through 61.49.

*(ff) Price cap tariff filing.* Any tariff filing involving a service subject to price cap regulation, or that requires calculations pursuant to §§ 61.45, 61.46, or 61.47.

*(gg) [Reserved]*

*(hh) Rate.* The tariffed price per unit of service.

*(ii) Rate increase.* Any change in a tariff which results in an increased rate or charge to any of the filing carrier's customers.

*(jj) Rate level change.* A tariff change that only affects the actual rate associated with a rate element, and does not affect any tariff regulations or any other wording of tariff language.

*(kk) Regulations.* The body of carrier prescribed rules in a tariff governing the offering of service in that tariff, including rules, practices, classifications, and definitions.

*(ll) Restructured service.* An offering which represents the modification of a method of charging or provisioning a service; or the introduction of a new method of charging or provisioning that does not result in a net increase in options available to customers.

(mm) *Rural Company.* A company that, as of December 31, 1999, was certified to the Commission as a rural telephone company.

*(nn) Service Band Index (SBI).* An index of the level of aggregate rate element rates in a service category, which index is calculated pursuant to § 61.47.

*(oo) Service category.* Any group of rate elements subject to price cap regulation, which group is subject to a band.

*(pp) Supplement.* A publication filed as part of a tariff for the purpose of suspending or canceling that tariff, or tariff publication and numbered independently from the tariff page series.

*(qq) Target Rate.* The applicable Target Rate shall be defined as follows:

(1) For regional Bell Operating Companies and GTE, $0.0055 per ATS minute of use;

(2) For a holding company with a holding company average of less than 19 Switched Access End User Common Line charge lines per square mile served such company may elect to use a Target Rate of $0.0095 with respect to all exchanges owned by that holding company on July 1, 2000, or which that holding company is, as of April 1, 2000, under a binding and executed contract to purchase;

(3) For other price cap local exchange carriers, $0.0065 per ATS minute of use.

*(rr) Tariff.* Schedules of rates and regulations filed by common carriers.

*(ss) Tariff publication, or publication.* A tariff, supplement, revised page, additional page, concurrence, notice of revocation, adoption notice, or any other schedule of rates or regulations filed by common carriers.

*(tt) Tariff year.* The period from the day in a calendar year on which a carrier's annual access tariff filing is scheduled to become effective through the preceding day of the subsequent calendar year.

*(uu) Text change.* A change in the text of a tariff which does not result in a change in any rate or regulation.

*(vv) United States.* The several States and Territories, the District of Columbia, and the possessions of the United States.

*(ww) Corridor service.* ''Corridor service'' refers to interLATA services offered in the ''limited corridors'' established by the District Court in United States v. Western Electric Co., Inc., 569 F. Supp. 1057, 1107 (D.D.C. 1983).

*(xx) Toll dialing parity.* ''Toll dialing parity'' exists when there is dialing parity, as defined in § 51.5 of this chapter, for toll services.

*(yy) Loop-based services.* Loop-based services are services that employ Subcategory 1.3 facilities, as defined in § 36.154 of this chapter.

*(zz) Zone Average Revenue per Line.* The Price Cap CMT Revenue per Line allocated to a particular state-defined zone used for deaveraging of UNE loop prices. The Zone Average Revenue per Line is computed according to the following formula:

Zone Average Revenue Per Line = (25% * (Loop + Port)) + U

Where:

Loop = the price for unbundled loops in a UNE zone.

Port = price for switch ports in that UNE zone.

U(Uniform revenue per line adjustment) =

U = [(Price Cap CMT Revenue Per Line Month in a study area * LEC Base Period Lines) − (25% * Σ (LEC Base Period Lines in a UNE Zone × ((Loop + Port ) for all zones)))] ÷ LEC Base Period Lines in a study area.

10. Amend § 61.41 by revising paragraphs (c) and (d) to read as follows:

**§ 61.41 Price cap requirements generally.**

* * * * *

(c) The following rules in this paragraph (c) apply to telephone companies subject to price cap regulation, as that term is defined in § 61.3(ee), which are involved in mergers, acquisitions, or similar transactions.

(1) Any telephone company subject to price cap regulation that is a party to a merger, acquisition, or similar transaction shall continue to be subject to price cap regulation notwithstanding such transaction.

(2) Where a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that is not subject to price cap regulation, the latter telephone company shall become subject to price cap regulation no later than one year following the effective date of such merger, acquisition, or similar transaction and shall accordingly file price cap tariffs to be effective no later than that date in accordance with the applicable provisions of this part 61.

(3) Notwithstanding the provisions of § 61.41(c)(2), when a telephone company subject to price cap regulation acquires, is acquired by, merges with, or otherwise becomes affiliated with a telephone company that qualifies as an 'average schedule' company, the latter company may retain its 'average schedule' status or become subject to price cap regulation in accordance with § 69.3(i)(3) of this chapter and the requirements referenced in that section.

(d) Local exchange carriers that become subject to price cap regulation as that term is defined in § 61.3(ee) shall not be eligible to withdraw from such regulation.

11. Amend § 61.42 by removing paragraphs (d)(6) and (e)(2)(v) through (e)(2)(vii) and revising paragraphs (d)(1), (d)(3), (d)(5), (e)(2)(i) through (e)(2)(iv), and adding paragraph (e)(3), to read as follows:

**§ 61.42 Price cap baskets and service categories.**

* * * * *

(d) * * *

(1) A basket for the common line, marketing, and certain residual interconnection charge interstate access elements as described in §§ 69.115, 69.152, 69.153, 69.154, 69.155, 69.156, and 69.157 of this chapter. For purposes of §§ 61.41 through 61.49, this basket shall be referred to as the ''CMT basket.''

* * * * *

(3) A basket for trunking services as described in §§ 69.110, 69.111, 69.112, 69.125(b), 69.129, and 69.155 of this chapter. For purposes of §§ 61.41

through 61.49, this basket shall be referred to as the ''trunking basket.''

* * * * *

(5) A basket for special access services as described in § 69.114 of this chapter.

* * * * *

(e) * * *

(2) The trunking basket shall contain such switched transport as the Commission shall permit or require, including the following service categories and subcategories:

(i) Voice grade entrance facilities, voice grade direct-trunked transport, voice grade dedicated signalling transport,

(ii) High capacity flat-rated transport, including the following service subcategories:

(A) DS1 entrance facilities, DS1 direct-trunked transport, DS1 dedicated signalling transport, and

(B) DS3 entrance facilities, DS3 direct-trunked transport, DS3 dedicated signalling transport.

(iii) Tandem-switched transport, as described in § 69.111 of this chapter; and

(iv) Signalling for tandem switching, as described in § 69.129 of this chapter.

* * * * *

(3) The special access basket shall contain special access services as the Commission shall permit or require, including the following service categories and subcategories:

(i) Voice grade special access, WATS special access, metallic special access, and telegraph special access services;

(ii) Audio and video services;

(iii) High capacity special access, and DDS services, including the following service subcategories:

(A) DS1 special access services; and

(B) DS3 special access services;

(iv) Wideband data and wideband analog services.

12. Revise § 61.45 to read as follows:

**§ 61.45 Adjustments to the PCI for Local Exchange Carriers.**

(a) Local exchange carriers subject to price cap regulation shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year exogenous cost changes.

(b)(1)(i) Adjustments to local exchange carrier PCIs, in those carriers' annual access tariff filings, the traffic sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), the special access basket described in § 61.42(d)(5) and the Interexchange Basket described in § 61.42(d)(4)(i), shall be made pursuant to the following formula:

$PCI_{t-1} = PCI_{t-1}[1+w[GDP-PI-X] + Z/R]$

Where the terms in the equation are described:

GDP–PI = For annual filings only, the percentage change in the GDP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year. For all other filings, the value is zero.

X = For the CMT, traffic sensitive, and trunking baskets, for annual filings only, the factor is set at the level prescribed in paragraphs (b)(1)(ii) and (iii) of this section. For the interexchange basket, for annual filings only, the factor is set at the level prescribed in paragraph (b)(1)(v) of this section. For the special access basket, for annual filings only, the factor is set at the level prescribed in paragraph (b)(1)(iv) of this section. For all other filings, the value is zero.

g = For annual filings for the CMT basket only, the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period, all minus 1.

Z = The dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to $PCI_{t-1}$, measured at base period level of operations.

Targeted Reduction = the actual possible dollar value of the (GDP–PI–X) reductions that will be targeted to the ATS Charge pursuant to § 61.45(i)(3). The reductions calculated by applying the (GDP–PI–X) portion of the formula to the CCL element within the CMT basket will contain the ''g'' component, as defined above.

R = Base period quantities for each rate element ''I'', multiplied by the price for each rate element ''I'' at the time the PCI was updated to $PCI_{t-1}$.

w = R + Z, all divided by R (used for the traffic sensitive, trunking, and special access baskets).

$w_{ix}$ = R—(access rate in effect at the time the PCI was updated to $PCI_{t-1}$ x base period demand) + Z, all divided by R.

$PCI_t$ = The new PCI value.

$PCI_{t-1}$ = the immediately preceding PCI value.

(b)(1)(ii) The X value applicable to the baskets specified in §§ 61.42(d)(1), (d)(2), and (d)(3), shall be 6.5%, to the extent necessary to reduce a tariff entity's ATS charge to its Target Rate as set forth in § 61.3(qq). Once an LEC tariff entity's ATS Charge is equal to the Target Rate as set forth in § 61.3(qq) for the first time (the former NYNEX telephone companies may be treated as a separate tariff entity), then, except as provided in paragraph (b)(1)(iii) of this section, X is equal to GDP–PI and no further reductions will be mandated (*i.e.,* if applying the full X-factor reduction for a given year would reduce the ATS charge below the Target Rate as set forth in § 61.3 (qq), the amount of X-factor reduction applied that year will be the amount necessary to reach the Target Rate as set forth in § 61.3 (qq)). A filing entity does not reach the Target Rate as set forth in § 61.3(qq) in any year in which it exercises an exogenous adjustment pursuant to § 61.45(d)(vii). For companies with separate tariff entities under a single price cap, the following rules shall apply:

(A) Targeting amounts as defined in § 61.45(i)(1)(i) shall be identified separately, using the revenue for each of the tariff entities under the cap.

(B) Each tariff entity shall only be required to use the amount of targeting necessary to get to the Target Rate as set forth in § 61.3 (qq).

(b)(1)(iii)(A) Except as provided in paragraph (b)(1)(iii)(B) of this section, once the Tariff Entity's Target Rate as set forth in § 61.3 (qq) is achieved, the X-factor for the CMT basket will equal GDP–PI as long as GDP–PI is less than or equal to 6.5% and greater than 0%. If GDP–PI is greater than 6.5%, and an entity has eliminated its CCL and multi-line business PICs charges, the X-factor for the CMT basket will equal 6.5%, and all End User Common Line charges, rates and nominal caps, will be increased by the difference between GDP–PI and the 6.5% X-factor. If GDP–PI is less than 0, the X-factor for the CMT basket will be 0.

(B) For tariff filing entities with a Target Rate of $0.0095, or for the portion of a filing entity consolidated pursuant to § 61.48(o) that, prior to such consolidation, had a Target Rate of $0.0095, in which the ATS charge has achieved the Target Rate but in which the carrier common line (CCL) charge has not been eliminated, the X-factor for the CMT basket will be 6.5% until the earlier of June 30, 2004, or until CCL charges are eliminated pursuant to paragraph (i)(4) of this section. Thereafter, in any filing entity in which a CCL charge remains after July 1, 2004, the X-factor for the CMT basket will be determined pursuant to paragraph (b)(1)(iii)(A) of this section as if CCL charges were eliminated.

(b)(1)(iv) For the special access basket specified in § 61.42(d)(5), the value of X shall be 3.0% for the 2000 annual filing.

The value of X shall be 6.5% for the 2001, 2002 and 2003 annual filings. Starting in the 2004 annual filing, X shall be equal to GDP–PI for the special access basket.

(b)(1)(v) For the interexchange basket specified in § 61.42(d)(4), the value of X shall be 3.0% for all annual filings.

(b)(2) Adjustments to local exchange carrier PCIs and average price cap CMT revenue per line, in tariff filings other than the annual access tariff filing, for the CMT basket described in § 61.42(d)(1), the traffic sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), the interexchange basket described in § 61.42(d)(4), and the special access basket described in § 61.42(d)(5), shall be made pursuant to the formulas set forth in paragraph (b)(1)(i) of this section, except that the ''w(GDP–PI–X)'' component of those PCI formulas shall not be employed.

(c) Effective July 1, 2000, the prices of the CMT basket rate elements, excluding special access surcharges under § 69.115 of this chapter and line ports in excess of basic under § 69.157 of this chapter, shall be set based upon Average Price Cap CMT Revenue Per Line month.

(d) The exogenous cost changes represented by the term ''Z'' in the formula detailed in paragraphs (b)(1)(i) of this section shall be limited to those cost changes that the Commission shall permit or require by rule, rule waiver, or declaratory ruling.

(1) Subject to further order of the Commission, those exogenous changes shall include cost changes caused by:

(i) The completion of the amortization of depreciation reserve deficiencies;

(ii) Such changes in the Uniform System of Accounts, including changes in the Uniform System of Accounts requirements made pursuant to § 32.16 of this chapter, as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling;

(iii) Changes in the Separations Manual;

(iv) [Reserved]

(v) The reallocation of investment from regulated to nonregulated activities pursuant to § 64.901 of this chapter;

(vi) Such tax law changes and other extraordinary cost changes as the Commission shall permit or require be treated as exogenous by rule, rule waiver, or declaratory ruling;

(vii) Retargeting the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark, subject to the limitation in § 69.731 of this chapter. The allocation of LFAM amounts will be allocated pursuant to § 61.45(d)(3). This section shall not be applicable to tariff filings during the tariff year beginning July 1, 2000, but is applicable in subsequent years;

(viii) Inside wire amortizations;

(ix) The completion of amortization of equal access expenses.

(2) Local exchange carrier specified in §§ 61.41(a)(2) or (a)(3) shall, in their annual access tariff filing, recognize all exogenous cost changes attributable to modifications during the coming tariff year in their Subscriber Plant Factor and the Dial Equipment Minutes factor, and completions of inside wire amortizations and reserve deficiency amortizations.

(3) Exogenous cost changes shall be apportioned on a cost-causative basis between price cap services as a group, and excluded services as a group. Total exogenous cost changes thus attributed to price cap services shall be recovered from services other than those used to calculate the ATS charge.

(e) [Reserved]

(f) The exogenous costs caused by new services subject to price cap regulation must be included in the appropriate PCI calculations under paragraphs (b) and (c) of this section beginning at the first annual price cap tariff filing following completion of the base period in which such services are introduced.

(g) In the event that a price cap tariff becomes effective, which tariff results in an API value (calculated pursuant to § 61.46) that exceeds the currently applicable PCI value, the PCI value shall be adjusted upward to equal the API value.

(h) [Reserved]

(i)(1)(i) Price cap local exchange carriers that are recovering revenues through rates pursuant to §§ 69.106, 69.108, 69.109, 69.110, 69.111, 69.112, 69.113, 69.118, 69.123, 69.124, 69.125, 69.129, or § 69.155 of this chapter shall target, to the extent necessary to reduce the ATS Charge to the Target Rate as set forth in § 61.3 (qq) for the first time, any PCI reductions associated with the dollar impact of application of the (GDPPI–X) portion of the formula in § 61.45(b)(1)(i) to the traffic sensitive and trunking baskets. In order to calculate the actual dollars to transfer to the trunking and traffic sensitive baskets, carriers will first determine the ''Targeted Revenue Differential'' that will be transferred to the trunking and traffic sensitive baskets to reduce the ATS Charge to the Target Rate as set forth in § 61.3(qq). The Targeted Revenue Differential shall be applied only to the trunking and traffic sensitive baskets to the extent necessary to reduce the ATS charge to the Target Rate as set forth in § 61.3 (qq), and shall not be applied to reduce the PCIs in any other basket or to reduced average price cap CMT Revenue per line, except as provided in § 61.45(i)(4).

(ii) For the purposes of § 61.45(i)(1)(i), Targeted Revenue Differential will be determined by adding together the following amounts:

(A) R * (GDP–PI − X) for the traffic sensitive basket, trunking basket, and the CMT basket excluding CCL revenues; and

(B) CCL Revenues * [(GDP–PI–X − (g/2)]/[1 + (g/2)]

Where ''g'' is defined in § 61.45(b)(1)(i).

(2) Until a tariff entity's ATS Charge equals the Target Rate as set forth in § 61.3 (qq) for the first time, the Targeted Revenue Differential will be targeted to reduce the following rates for that tariff filing entity, in order of priority:

(i) To the residual per minute Transport Interconnection Charge, until that rate is $0.00; then

(ii) To the Information Surcharge, until that rate is $0.00; then

(iii) To the other Local Switching charges and Switched Transport charges until the tariff entity's ATS Rate equals the Target Rate as set forth in § 61.3(qq) for the first time. In making these reductions, the reductions to Local Switching rates as a percentage of total X-factor reductions must be greater than or equal to the percentage proportion of Local Switching revenues to the total sum of revenues for Local Switching, Local Switching Trunk Ports, Signalling Transfer Point Port Termination, Switched Direct Trunked Transport, Signalling for Switched Direct Trunked Transport, Entrance Facilities for switched access traffic, Tandem Switched Transport, and Signalling for Tandem Switching (*i.e.,* Local Switching gets at least its proportionate share of reductions).

(3) After a price cap LEC reaches the Target Rate as set forth in § 61.3(qq) level, the ATS Rate will be recalculated each subsequent Annual Filing. This process will identify the new ATS Charge for the new base period level. Due to change in base period demand and inclusion of new services for that annual filing, the absolute level of a tariff entity's ATS Charge may change. The resulting new ATS Charge level will be what that tariff entity will be measured against during that base period. For example, if a company whose target is $0.0055 reached the Target Rate during the 2000 annual filing, that level may change to $0.0058 in the 2001 annual filing due to change in demand and inclusion of new

services. Therefore, it will be the $0.0058 average rate that the tariff entity will be measured against for all non-annual filings. Likewise, if that same company was at the Target Rate during the 2000 filing, that level may change to $0.0053 average rate in the 2001 annual filing due to change in demand and inclusion of new services. In that case, it will be at the $0.0053 average rate that the tariff entity will be measured.

(4) A company electing a $0.0095 Target Rate will, in the tariff year it reaches the Target Rate, apply any Targeted Revenue Differential remaining after reaching the Target Rate to reduce Average Price Cap CMT Revenue per Line month until the CCL charge is eliminated. In subsequent years, until the earlier of June 30, 2004 or when the CCL charge is eliminated, tariff filing entities with a Target Rate of $0.0095, or the portion of a filing entity consolidated pursuant to § 61.48(o) that, prior to such consolidation, had a Target Rate of $0.0095, will reduce Average Price Cap CMT Revenue per Line month according to the following method:

(i) Filing entity calculates the maximum allowable carrier common line revenue, as defined in § 61.46(d)(1), that would be permitted in the absence of further adjustment pursuant to this paragraph;

(ii) Filing entity identifies maximum amount of dollars available to reduce Average Price Cap CMT Revenue per Line month by the following:

(CMT revenue in a $0.0095 Area less CCL revenue in a $0.0095 Area) * (GDPPI–X) + (CCL Revenue in a $0.0095 Area) * [GDPPI–X − (g/2)]/[1+(g/2)]

(iii) The Average Price Cap CMT Revenue per Line month shall then be reduced by the lesser of the amount described in paragraph (i)(4)(i) of this section and the amount described in paragraph (i)(4)(ii) of this section, divided by base period Switched Access End User Common Line Charge lines.

* * * * *

13. Revise § 61.46 to read as follows:

**§ 61.46 Adjustments to the API.**

(a) Except as provided in paragraphs (d) and (e) of this section, in connection with any price cap tariff filing proposing rate changes, the carrier must calculate an API for each affected basket pursuant to the following methodology:

$API_t = API_{t-1}[S_1 v_i,(p_t/p_{t-1})i]$

Where:

API[t] = the proposed API value, API[t − 1] = the existing API value,

P[t] = the proposed price for rate element ''i,''

P[t − 1] = the existing price for rate element ''i,'' and

v[i] = the current estimated revenue weight for rate element ''i,'' calculated as the ratio of the base period demand for the rate element ''i'' priced at the existing rate, to the base period demand for the entire basket of services priced at existing rates.

(b) New services subject to price cap regulation must be included in the appropriate API calculations under paragraph (a) of this section beginning at the first annual price cap tariff filing following completion of the base period in which they are introduced. This index adjustment requires that the demand for the new service during the base period must be included in determining the weights used in calculating the API.

(c) Any price cap tariff filing proposing rate restructuring shall require an adjustment to the API pursuant to the general methodology described in paragraph (a) of this section. This adjustment requires the conversion of existing rates into rates of equivalent value under the proposed structure, and then the comparison of the existing rates that have been converted to reflect restructuring to the proposed restructured rates. This calculation may require use of carrier data and estimation techniques to assign customers of the preexisting service to those services (including the new restructured service) that will remain or become available after restructuring.

(d) The maximum allowable carrier common line (CCL) revenue shall be computed pursuant to the following methodology:

CCL = CMT − EUCL − Interstate Access Universal Service Support Mechanism Per Line − PICC

Where:

CMT = Price Cap CMT Revenue as defined in § 61.3(cc).

EUCL = Maximum allowable EUCL rates established pursuant to § 69.152 of this chapter multiplied by base period lines.

Interstate Access Universal Service Support Per Line = the amount as determined by the Administrator pursuant to § 54.807 of this chapter times the number of base period lines for each customer class and zone receiving Interstate Access USF support pursuant to part 54, subpart J.

PICC = Maximum allowable PICC rates established pursuant to § 69.153 of this chapter multiplied by base period lines.

(e) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

14. Amend § 61.47 by revising paragraphs (e) through (k) to read as follows:

**§ 61.47 Adjustments to the SBI; pricing bands.**

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Each band shall limit the pricing flexibility of the service category, subcategory, as reflected in the SBI, to an annual increase of a specified percent listed in this paragraph, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchanage carriers subject to price cap regulation as that term is defined in § 61.3(ee), there shall be no lower pricing band for any service category or subcategory.

(1) Five percent:

(i) Local Switching (traffic sensitive basket)

(ii) Information (traffic sensitive basket)

(iii) Database Access Services (traffic sensitive basket)

(iv) 800 Database Vertical Services subservice (traffic sensitive basket)

(v) Billing Name and Address (traffic sensitive basket)

(vi) Local Switching Trunk Ports (traffic sensitive basket)

(vii) Signalling Transfer Point Port Termination (traffic sensitive basket)

(viii) Voice Grade (trunking and special access baskets)

(ix) Audio/Video (special access basket)

(x) Total High Capacity (trunking and special access baskets)

(xi) DS1 Subservice (trunking and special access baskets)

(xii) DS3 Subservice (trunking and special access baskets)

(xiii) Wideband (special access basket)

(2) Two percent:

(i) Tandem-Switched Transport (trunking basket)

(ii) Signalling for Tandem Switching (trunking basket)

(f) A local exchange carrier subject to price cap regulation may establish density zones pursuant to the requirements set forth in § 69.123 of this chapter, for any service in the trunking and special access baskets, other than the interconnection charge set forth in § 69.124 of this chapter. The pricing flexibility of each zone shall be limited to an annual increase of 15 percent, relative to the percentage change in the PCI for that basket, measured from the

levels in effect on the last day of the preceding tariff year. There shall be no lower pricing band for any density zone.

(g) [Reserved]

(h) [Reserved]

(i)(l) [Reserved]

(2) Effective January 1, 1998, notwithstanding the requirements of paragraph (a) of this section, if a local exchange carrier is recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 of this chapter, any reductions to the PCI for the basket designated in § 61.42(d)(3) resulting from the application of the provisions of § 61.45(b)(1)(i) and from the application of the provisions of §§ 61.45(i)(1) and 61.45(i)(2) shall be directed to the SBI of the service category designated in § 61.42(d)(i).

(3) [Reserved]

(4) Effective January 1, 1998, the SBI reduction required by paragraph (i)(2) of this section shall be determined by dividing the sum of the dollar amount of any PCI reduction required by §§ 61.45(i)(1) and 61.45(i)(2), by the dollar amount associated with the SBI for the service category designated in § 61.42(e)(2)(vi), and multiplying the SBI for the service category designated in § 61.42(e)(2)(vi) by one minus the resulting ratio.

(5) Effective July 1, 2000, notwithstanding the requirements of paragraph (a) of this section and subject to the limitations of § 61.45(i), if a local exchange carrier is recovering an ATS charge greater than its Target Rate as set forth in 61.3(qq), any reductions to the PCI for the Traffic Sensitive or Trunking baskets designated in §§ 61.42(d)(2) and 61.42(d)(3) resulting from the application of the provisions of § 61.45(b), and the formula in § 61.45(b) and from the application of the provisions of §§ 61.45(i)(1), and 61.45(i)(2) shall be directed to the SBIs of the service categories designated in §§ 61.42(e)(1) and 61.42(e)(2).

(j) [Reserved]

(k) In no case shall a price cap local exchange carrier include data associated with services offered pursuant to contract tariff in the calculations required by this section.

15. Amend § 61.48 by removing and reserving paragraphs (j) and (k), revising paragraphs (i)(2), (i)(3), (i)(4) introductory text and (i)(4)(iii), and by adding paragraphs (l) through (o), to read as follows:

**§ 61.48 Transition rules for price cap formula calculations.**

* * * * *

(i)* * *

(2) *Simultaneous Introduction of Special Access and Transport Zones.* local exchange carrier subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on the same date, shall initially establish density pricing zone SBIs and bands pursuant to the methodology in §§ 61.47(e) through (f).

(3) *Sequential Introduction of Zones in the Same Tariff Year.* Notwithstanding §§ 61.47(e) through (f), local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date occur on different dates during the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in §§ 61.47(e) through (f), but applicable to the earlier service only. On the later date, such carriers shall recalculate the SBIs and pricing bands to limit the pricing flexibility of the services included in each density pricing zone category, as reflected in its SBI, as follows:

* * * * *

(4) *Introduction of Zones in Different Tariff Years.* Notwithstanding §§ 61.47(e) through (f), those local exchange carriers subject to price cap regulation that have established density pricing zones pursuant to § 69.123 of this chapter, and whose special access zone date and transport zone date do not occur within the same tariff year, shall, on the earlier date, establish density pricing zone SBIs and pricing bands using the methodology described in §§ 61.47(e) through (f), but applicable to the earlier service only.

* * * * *

(iii) On the first day of the second tariff year following the tariff year during which the later date occurs, the local exchange carriers to which this paragraph applies shall establish the separate subindexes provided in § 61.47(e), and shall set the initial SBIs for those density pricing zone categories that are combined (specified in paragraphs (i)(4)(i)(A), (i)(4)(i)(B), (i)(4)(i)(C), (i)(4)(i)(D), (i)(4)(i)(E), and (i)(4)(i)(G) of this section) by computing the weighted averages of the SBIs that applied to the formerly separate zone categories, weighted by the revenue weights of the respective services included in the zone categories.

* * * * *

(l) *Average Traffic Sensitive Revenues.* (1) In the July 1, 2000 annual filing, price cap LECs will make an additional reduction to rates comprising ATS charge, and to associated SBI upper limits and PCIs. This reduction will be calculated to be the amount that would be necessary, when calculated as if all price cap LECs elect to be price cap LECs, to achieve a total $2.1 billion reduction in carrier common line and ATS rates by all price cap LECs, compared with those rates as they existed on June 30, 2000 using 2000 annual filing base period demand.

(i) The net change in revenue associated with Carrier Common Line Rate elements resulting from:

(A) The removal from access of LEC contributions to the Federal universal service mechanisms;

(B) LEC receipts of Interstate Access USF pursuant to subpart J of part 54;

(C) Changes in End User Common Line Charges and PICC rates;

(D) Changes in Carrier Common Line charges due to GDP–PI–X targeting for $0.0095 filing entities.

(ii) Reductions in Average Traffic Sensitive charges resulting from:

(A) Targeting of the application of the (GDPPI–X) portion of the formula in § 61.45(b), and any applicable ''g'' adjustments;

(B) The removal from access of LEC contributions to the Federal universal service mechanisms;

(C) Additional ATS charge reductions defined in paragraph (2) of this section.

(2) Once the reductions in paragraph (l)(1)(i) and paragraphs (l)(1)(ii)(A) and (l)(1)(ii)(B) of this section are identified, the difference between those reductions and $2.1 billion is the total amount of additional reductions that would be made to ATS rates of price cap LECs. This amount will then be restated as the percentage of total price cap LEC Local Switching revenues as of June 30, 2000 using 2000 annual filing base period demand (''June 30 Local Switching revenues'') necessary to yield the total amount of additional reductions and taking into account the fact that, if participating, a price cap LEC would not reduce ATS rates below its Target Rate as set forth in § 61.3(qq). Each price cap LEC then reduces ATS rate elements, and associated SBI upper limits and PCIs, by a dollar amount equivalent to the percentage times the June 30 Local Switching revenues for that filing entity, provided that no price cap LEC shall be required to reduce its ATS rates below its Target Rate as set forth in § 61.3(qq). Each carrier can take its additional reductions against any of the ATS rate elements, provided that at least a proportional share must be taken against Local Switching rates.

(m) *Local Switching Revenues.* (1) Price cap local exchange carriers are

permitted to pool local switching revenues in their common line basket under one of the following conditions.

(i) Any price cap local exchange carriers that would otherwise have July 1, 2000 price cap reductions as a percentage of Base Period Price Cap Revenues at the holding company level greater than the industry wide total July 1, 2000 price cap revenue reduction as a percentage of Base Period Price Cap Revenues may elect temporarily to pool the amount of the additional reductions above 25% of the Local Switching element revenues necessary to yield that carrier's proportionate share of a total $2.1 billion reduction in switched access usage rates on July 1, 2000. The basis of the reduction calculation will be R at $PCI_{(t-1)}$ for the upcoming tariff year. The percentage reductions per line amounts will be calculated as follows:

(Total Price Cap Revenue Reduction/Base Period Price Cap Revenues) Pooled local switching revenue for each filing entity within a holding company that qualifies under this paragraph (i) will continue until such pooled revenues are eliminated under this paragraph. Notwithstanding the provisions of § 61.45(b)(1), once the Average Traffic Sensitive (ATS) rate reaches the applicable Target Rate as set forth in § 61.3(qq), the Targeted Revenue Differential as defined in § 61.45(i) shall be targeted to reducing pooled local switching revenue until the pooled local switching revenue is eliminated. Thereafter, the X-factor for these baskets will be determined in accordance with § 61.45(b)(1).

(ii) Price cap local exchange carriers other than the Bell companies and GTE with at least 20% of total holding company lines operated by companies that as of December 31, 1999 were certified to the Commission as rural carriers, may elect to pool up to the following amounts:

(A) For a price cap holding company's predominantly non-rural filing entities (*i.e.,* filing entities within which more than 50% of all lines are operated by telephone companies other than those that as of December 31, 1999 were certified to the Commission as rural telephone companies), the amount of the additional reductions to Average Traffic Sensitive Charge rates as defined in paragraph (l)(2) of this section, to the extent such reductions exceed 25% of the Local Switching element revenues (measured in terms of June 30, 2000 rates times 1999 base period demand);

(B) For a price cap holding company's predominantly rural filing entities (*i.e.,* filing entities with greater than 50% of lines operated by telephone companies that as of December 31, 1999 were certified to the Commission as rural telephone companies), the amount of the additional reductions to Average Traffic Sensitive Charge rates as defined in paragraph (l)(2) of this section.

(2) Allocation of Pooled Local Switching Revenue to Certain Common Line Elements.

(i) The pooled local switching revenue for each filing entity is shifted to the common line basket within price caps. Pooled local switching revenue will not be included in calculations to determine the eligibility for interstate access universal service funding.

(ii) Pooled local switching revenue will be capped on a revenue per line basis.

(iii) Pooled local switching revenue is included in the total revenue for the common line basket in calculating the X-factor reduction targeted to the traffic sensitive rate elements, and for companies qualified under paragraph (m)(1)(i) of this section, to pooled elements after the Average Traffic Sensitive Charge reaches the target level. For the purpose of targeting X-factor reductions, companies that allocate pooled local switching revenue to other filing entities pursuant to paragraph (m)(2)(vii) of this section shall include pooled local switching revenue in the total revenue of the common line basket of the filing entity from which the pooled local switching revenue originated.

(iv) Pooled local switching revenue shall be kept separate from CMT revenue in the CMT basket. CMT rate elements for each filing entity shall first be set based on CMT revenue per line without regard to the presence of pooled local switching revenue for each filing entity.

(v) If the rates generated without regard to the presence of pooled local switching revenue for multi-line business (MLB) PICC and/or MLB SLC are below the nominal caps of $4.31 and $9.20, respectively, pooled amounts can be added to these rate elements to the extent permitted by the nominal caps.

(vi) Notwithstanding the provisions of § 69.152(k) of this chapter, pooled local switching revenue is first added to the MLB SLC until the rate equals the nominal cap ($9.20) or the pooled local switching revenue is fully allocated. If pooled local switching revenue remains after applying amounts to the MLB SLC, notwithstanding the provisions of § 69.153 of this chapter, the remaining pooled local switching revenue may be added to the MLB PICC until the rate equals the nominal cap ($4.31) or the pooled local switching revenue is fully allocated. Unallocated pooled local switching revenue may still remain. For companies pooling pursuant to paragraph (m)(1)(i) of this section, these unallocated amounts may not be recovered from the CCL charge, the primary residential and single-line business SLC, a non-primary residential SLC, or from CMT elements in any other filing entity.

(vii) For companies pooling pursuant to paragraph (m)(1)(ii) of this section, pooled local switching revenue that can not be allocated to the MLB PICC and MLB SLC rates within an individual filing entity may not be recovered from the CCL charge, primary residential and single-line business SLC or residential/single-line business SLC charges, but may be allocated to other filing entities within the holding company, and collected by adding these amounts to the MLB PICC and MLB SLC rates. The allocation of pooled local switching revenue among filing entities will be re-calculated at each annual filing. In subsequent annual filings, pooled local switching revenue that was allocated to another filing entity will be reallocated to the filing entity from where it originated, to the full extent permitted by the nominal caps of $9.20 and $4.31.

(viii) Notwithstanding the provisions of § 69.152(k) of this chapter, these unallocated local switching revenues that cannot be recovered fully pursuant to paragraph (m)(2)(vii) of this section are first added to the MLB SLC of other filing entities until the resulting rate equals the nominal cap ($9.20) or the pooled local switching revenue for the holding company is fully allocated. If the pooled local switching revenue can be fully allocated to the MLB SLC, the amount is distributed to each filing entity with a rate below the nominal cap ($9.20) based on its below-cap MLB SLC revenue as a percentage of the total holding company's below-cap MLB SLC revenue.

(ix) If pooled local switching revenue remains after applying amounts to the MLB SLC of all filing entities in the holding company, pooled local switching revenue may be added to the MLB PICC of other filing entities. Notwithstanding the provisions of § 69.153 of this chapter, the remaining pooled local switching revenue is distributed to each filing entity with a rate below the nominal cap ($4.31) based on its below-cap MLB PICC revenue as a percentage of the total holding company's below-cap MLB PICC revenue.

(x) If pooled local switching revenue is added to the MLB SLC but not to the MLB PICC for a filing entity that qualified to de-average SLCs without regard to pooled local switching, the resulting SLC rates can still be de-

averaged. Total pooled local switching is added to the de-averaged zone 1 MLB SLC rate until the per line rate in zone 1 equals the rate in zone 2 or until the pooled local switching is fully allocated to the de-averaged MLB SLC rate for zone 1. If pooled local switching revenue remains after the rate in zone 1 equals zone 2, the de-averaged rates of zone 1 and zone 2 are increased until the pooled local switching is fully allocated to the de-averaged MLB SLC rates of zone 1 and 2 or until those rates reaches zone 3 MLB SLC rate level. This process continues until pooled local switching revenue is fully allocated to the zone de-averaged rates.

(n) Establishment of the special access basket, effective July 1, 2000.

(1) On the effective date, the PCI value for the special access basket, as defined in § 61.42(d)(5) shall be equal to the PCI for the trunking basket on the day preceding the establishment of the special access basket.

(2) On the effective date, the API value for the special access basket, as defined in § 61.42(d)(5) shall be equal to the API for the trunking basket on the day preceding the establishment of the special access basket.

(3) Service Category, Subcategory, and Density Zone SBIs and Upper Limits.

(i) Interconnection, Tandem Switched Transport, and Signalling Interconnection will retain the SBIs and upper limits and remain in the trunking basket.

(ii) Audio/Video and Wideband will retain the SBIs and upper limits and be moved into the special access basket.

(iii) For Voice Grade, the SBIs and upper limits in both baskets will be equal to the SBIs and upper limits in the existing trunking basket on the day preceding the establishment of the special access basket. Voice Grade density zones in the trunking basket will retain their indices and upper limits. Voice Grade density zones will be initialized in the special access basket when services are first offered in them.

(iv) For High Cap/DDS, DS1, and DS3 category and subcategories, the SBIs and upper limits in both baskets will be equal to the SBIs and upper limits in the existing trunking basket on the day preceding the establishment of the special access basket. SBIs and upper limits for services that are in both combined density zones and either DTT/EF or special access density zones will be calculated by using weighted averages of the indices in the affected zones.

(v) For each DTT/EF-related zone remaining in the trunking basket, the values will be calculated by taking the sum of the products of the DTT/EF revenues times the DTT/EF index (or upper limit) and the DTT/EF-related revenues in the combined zone times the combined index (or upper limit), and dividing by the total DTT/EF-related revenues for that zone.

(vi) For each special access-related zone in the special access basket, the values will be calculated by taking the sum of the products of the special access revenues times the special access index (or upper limit) and the special access-related revenues in the combined zone times the combined index (or upper limit), and dividing by the total special access-related revenues for that zone.

(o) Treatment of acquisitions of exchanges with different ATS Target Rates as set forth in § 61.3(qq):

(1) In the event of that a price cap LEC acquires a filing entity or portion thereof from a price cap LEC after July 1, 2000, and the price cap LEC did not have a binding and executed contract to purchase that filing entity or portion thereof as of April 1, 2000, those properties retain their pre-existing Target Rates as set forth in § 61.3(qq). If those properties are merged into a filing entity with a different Target Rate as set forth in § 61.3(qq), the Target Rate as set forth in § 61.3(qq) for the merged filing entity will be the weighted average of the Target Rates as set forth in § 61.3(qq) for the properties being combined into a single filing entity, with the average weighted by local switching minutes. When a property acquired as a result of a contract for purchase executed after April 1, 2000 is merged with $0.0095 Target Rate properties, the obligation to apply price-cap reductions to reduce CCL, pursuant to § 61.45(b)(iii) does not apply to the properties purchased under contracts executed after April 1, 2000, but continues to apply to the other properties.

(2) For sale of properties for which a holding company was, as of April 1, 2000, under a binding and executed contract to purchase but which close after June 30, 2000, but during tariff year 2000, and that are subject to the $0.0095 Target Rate as set forth in § 61.3(qq), the Average Traffic Sensitive Rate charged by the purchaser for that property will be the greater of $0.0095 or the Average Traffic Sensitive Rate for that property.

## PART 69—ACCESS CHARGES

17. The authority citation for part 69 continues to read as follows:

**Authority:** 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

18. Revise § 69.4(d) to read as follows:

**§ 69.4 Charges to be filed.**

* * * * *

(d) Recovery of Contributions to the Universal Service Support Mechanisms by Incumbent Local Exchange Carriers.

(1) Incumbent local exchange carriers other than price cap LECs may recover their contributions to the universal service support mechanisms through carriers' carrier charges.

(i) [Reserved]

(ii) Non-price cap local exchange carriers may recover their contributions to the universal service mechanism by applying a factor to their carrier common line charge revenue requirements.

(2)(i) In lieu of the carriers' carrier charges described in paragraph (d)(1) of this section, price cap local exchange carriers may recover their contributions to the universal service support mechanisms through explicit, interstate, end-user charges that are equitable and nondiscriminatory.

(ii) To the extent that price cap local exchange carriers implement explicit, interstate, end-user charges to recover their contributions to the universal service support mechanisms, they must make corresponding reductions in their access charges to avoid any double recovery.

* * * * *

19. Amend § 69.115 by revising paragraph (c) to read as follows:

**§ 69.115 Special access surcharges.**

* * * * *

(c) If the association, carrier or carriers that file the tariff are unable to estimate such average usage for a period ending May 31, 1985, the surcharge for such period shall be twenty-five dollars ($25) per line termination per month. As of June 30, 2000, these rates will remain and be capped at the current levels until June 30, 2005.

* * * * *

20. Revise § 69.152 to read as follows:

**§ 69.152 End user common line for price cap local exchange carriers.**

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon end users that subscribe to local exchange telephone service or Centrex service to the extent they do not pay carrier common line charges. A charge that is expressed in dollars and cents per line per month shall be assessed upon providers of public telephones. Such charge shall be assessed for each line between the premises of an end user, or public telephone location, and a Class 5 office that is or may be used for local exchange service transmissions.

(b) [Reserved]

(c) The charge for each subscriber line associated with a public telephone shall be equal to the monthly charge computed in accordance with paragraph (k) of this section.

(d)(1) Beginning July 1, 2000, in a study area that does not have deaveraged End User Common Line Charges, the maximum monthly charge for each primary residential or single-line business local exchange service subscriber line shall be the lesser of:

(i) The Average Price Cap CMT Revenue Per Line as defined in §§ 61.3(d) of this chapter or

(ii) The following:

(A) On July 1, 2000, $4.35.

(B) On July 1, 2001, $5.00.

(C) On July 1, 2002, $6.00.

(D) On July 1, 2003, $6.50.

(2) In the event that GDP-PI exceeds 6.5% or is less than 0%, the maximum monthly charge in paragraph (d)(1)(ii) of this section and the cap will be adjusted pursuant to § 61.45(b)(1)(iii) of this chapter.

(e)(1) Beginning July 1, 2000, in a study area that does not have deaveraged End User Common Line Charges, the monthly charge for each non-primary residential local exchange service subscriber line shall be the lesser of:

(i) $7.00; or

(ii) The greater of:

(A) The rate as of June 30, 2000 less reductions needed to ensure over recovery of CMT Revenues does not occur; or

(B) Average Price Cap CMT Revenue Per Line.

(2) In the event that GDP-PI is greater than 6.5% or is less than 0%, the maximum monthly charge in paragraph (e)(1)(i) of this section and the cap will be adjusted pursuant to § 61.45(b)(1)(iii) of this chapter.

(3) Where the local exchange carrier provides a residential line to another carrier so that the other carrier may resell that residential line to a residence that already receives a primary residential line, the local exchange carrier may collect the non-primary residential charge described in paragraph (e) of this section from the other carrier.

(f) The charge for each primary residential local exchange service subscriber line shall be the same as the charge for each single-line business local exchange service subscriber line.

(g) A line shall be deemed to be a residential subscriber line if the subscriber pays a rate for such line that is described as a residential rate in the local exchange service tariff.

(h) Effective July 1, 1999, only one of the residential subscriber lines a price cap LEC provides to a location shall be deemed to be a primary residential line.

(1) Effective July 1, 1999, for purposes of § 69.152(h) of this chapter, ''residential subscriber line'' includes residential lines that a price cap LEC provides to a competitive LEC that resells the line and on which the price cap LEC may assess access charges.

(2) Effective July 1, 1999, if a customer subscribes to residential lines from a price cap LEC and at least one reseller of the price cap LEC's lines, the line sold by the price cap LEC shall be the primary line, except that if a resold price cap LEC line is already the primary line, the resold line will remain the primary line should a price cap LEC subsequently sell an additional line to that residence.

(i) A line shall be deemed to be a single-line business subscriber line if the subscriber pays a rate that is not described as a residential rate in the local exchange service tariff and does not obtain more than one such line from a particular telephone company.

(j) No charge shall be assessed for any WATS access line.

(k)(1) Beginning on July 1, 2000, for any study area that does not have deaveraged End User Common Line charges and in the absence of voluntary reductions, the maximum monthly End User Common Line Charge for multi-line business lines will be the lesser of:

(i) $9.20, or

(ii) The greater of:

(A) The rate as of June 30, 2000, less reductions needed to ensure over recovery of CMT Revenues does not occur, or

(B) Average Price Cap CMT Per Line as defined in § 61.3(d) of this chapter.

**Note to paragraph (k)(1):** Except when the LEC reduces the rate through voluntary reductions, the multi-line business End User Common Line charge will be frozen until the study area's multi-line business PICC and CCL charge are eliminated.

(2) In the event that GDP–PI is greater than 6.5% or is less than 0%, the maximum monthly charge in paragraph (k)(1)(i) of this section and the cap will be adjusted pursuant to § 61.45(b)(1)(iii) of this chapter.

(l)(1) Beginning January 1, 1998, LEC shall assess no more than one End User Common Line charge as calculated under the applicable method under paragraph (e) of this section for Basic Rate Interface integrated services digital network (ISDN) service.

(2) Local exchange carriers shall assess no more than five End User Common Line charges as calculated under paragraph (k) of this section for Primary Rate Interface ISDN service.

(m) In the event the local exchange carrier charges less than the maximum End User Common Line charge for any subscriber lines, the local exchange carrier may not recover the difference between the amount collected and the maximum from carrier common line charges or PICCs.

(n) [Reserved]

(o) [Reserved]

(p) [Reserved]

(q) *End User Common Line Charge De-Averaging.* Beginning on July 1, 2000, LEC's may geographically deaverage End User Common Line charges subject to the following conditions:

(1) In order for price cap LEC to be allowed to de-average End User Common Line charges within a study area, the price cap LEC must have state Commission approved geographically deaveraged rates for UNE loops within that study area. Except where a LEC geographically deaverages through voluntary reductions, before a price cap LEC may geographically deaverage its End User Common Line rates, its Originating and Terminating CCL and Multi-line Business PICC rates in that study area must equal $0.00.

(2) All geographic deaveraging of End User Common Line charges by customer class within a study area must be according to the state commission-approved UNE loop zone. Solely for the purposes of determining interstate subscriber line charges and the interstate access universal service support described in §§ 54.806 and 54.807 of this chapter, a price cap LEC may not have more than four geographic End User Common Line Charge/USF zones absent a review by the Commission. Where a price cap LEC has more than four state-created UNE zones and the Commission has not approved use of additional zones, the price cap LEC will determine, at its discretion, which state-created UNE zones to consolidate so that it has no more than four zones for the purpose of determining interstate subscriber line charges and interstate access universal service support.

(3) Within a given zone, Multi-line Business End User Common Line rates cannot fall below Primary Residential and Single-Line Business or Non-Primary Residential End User Common Line charges. Non-Primary End User Common Line charges cannot fall below Primary Residential and Single-Line Business charges.

(4) For any given class of customer in any given zone, the Zone deaveraged End User Common Line Charge in that zone must be greater than or equal to the Zone deaveraged End User Common

Line charge in the zone with the next lower Zone Average Revenue Per Line.

(5) The sum of all revenues per month that would be generated from all deaveraged End User Common Line charges in all zones within a study area plus Interstate Access USF Support Per Line (as defined in § 54.807 of this chapter) for the applicable customer classes and zones receiving such support multiplied by corresponding base period lines, divided by the number of base period lines in that study area cannot exceed Average Price Cap CMT Revenue Per Line as defined in § 61.3(d) of this chapter for that study area. In addition, the sum of revenues per month that would be generated from all deaveraged End User Common Line charges in all End User Common Line charge deaveraging zones within a study area plus revenues per month from all End User Common Line charge, multi-line business PICC and CCL charges from study areas within that study area that have not geographically deaveraged End User Common Line charges plus the sum of all Interstate Access USF Support Per Line (as defined in § 54.807 of this chapter) for the applicable customer classes and zones receiving such support, multiplied by the corresponding base period lines for the applicable customer classes and zones within the study area, divided by the number of total base period lines in the study area cannot exceed Average Price Cap CMT Revenue Per Line as defined in § 61.3(d) of this chapter for the study area.

(6) *Maximum charge.* The maximum zone deaveraged End User Common Line Charge that may be charged in any zone is the applicable cap specified in § 69.152(d)(1), § 69.152(e)(1)(i) or § 69.152 (k)(1)(i) Zone Average Revenue Per Line is the Price Cap CMT Revenue Per Line allocated to a particular state-defined zone used for deaveraging of UNE loop prices. The zone average revenue per line is computed pursuant to § 61.3 (zz) of this chapter.

(7) *Minimum charge.* Except where a LEC chooses to lower the deaveraged End User Common Line Charge through voluntary reductions, the minimum zone deaveraged End User Common Line Charge in any zone in a study area is at least the Minimum EUCL. Minimum EUCL is Zone Average Revenue Per Line for the zone with the lowest Zone Average Revenue Per Line in that study area plus an amount per line calculated to recover the difference between Interstate Access USF Support Per Line (as defined in § 54.807 of this chapter) multiplied by base period lines for the applicable customer class and zones receiving such support and Study Area Above Benchmark Revenues, first from Zone 1 until the End User Common Line Charges in Zone 1 equal the End User Common Line Charges in Zone 2, and then from lines in Zones 1 and 2 equally until the End User Common Line Charges in those Zones reach Zone 3 (with all End User Common Line Charges subject to the applicable residential and multi-line business lines nominal caps).

(i) For the purposes of this part, ''Study Area Above Benchmark Revenues'' is the sum of all Zone Above Benchmark Revenues.

(ii) For the purposes of this part, ''Zone Above Benchmark Revenues'' is calculated as follows:

Zone Above Benchmark Revenues is the sum of Zone Above Benchmark Revenues for Residential and Single-line Business lines and Zone Above Benchmark Revenues for Multi-line Business lines. Zone Above Benchmark Revenues for Residential and Single-line Business lines is, within each zone, (Zone Average Revenue Per Line minus $7.00) multiplied by all eligible telecommunications carrier Base Period Residential and Single-line Business lines times 12. If negative, the Zone Above Benchmark Revenues for Residential and Single-line Business lines for the zone is zero. Zone Above Benchmark Revenues for Multi-line Business lines is, within each zone,

(Zone Average Revenue Per Line minus $9.20) multiplied by all eligible telecommunications carrier zone Base Period Multi-line Business lines times 12. If negative, the Zone Above Benchmark Revenues for Multi-line Business lines for the zone is zero.

(8) *Voluntary Reductions.* A ''Voluntary Reduction'' is one in which the LEC reduces prices other than through offset of net increases in End User Common Line charge revenues or Interstate Access USF support received pursuant to § 54.807 of this chapter, or through increases in other zone deaveraged End User Common Line charges.

21. Amend § 69.153 to read as follows:

**§ 69.153 Presubscribed interexchange carrier charge (PICC).**

(a) A charge expressed in dollars and cents per line may be assessed upon the Multi-line business subscriber's presubscribed interexchange carrier to recover revenues totaling Average Price Cap CMT Revenues Per Line times the number of base period lines less revenues recovered through the End User Common Line charge established under § 69.152 and Interstate Access USF Support Per Line (as defined in § 54.807 of this chapter) multiplied by base period lines for the applicable customer class and zones receiving such support, up to a maximum of $4.31 per line per month. In the event the ceilings on the PICC prevent the PICC from recovering all the residual common line/marketing and residual interconnection charge revenues, the PICC shall recover all residual common line/marketing revenues before it recovers residual interconnection charge revenues.

(b) If an end-user customer does not have a presubscribed interexchange carrier, the local exchange carrier may collect the PICC directly from the end user.

(c) [Reserved]

(d) Local exchange carriers shall assess no more than five PICCs as calculated under paragraph (a) of this section for Primary Rate Interface ISDN service.

(e) The maximum monthly PICC for Centrex lines shall be one-ninth of the maximum charge determined under paragraph (a) of this section, except that if a Centrex customer has fewer than nine lines, the maximum monthly PICC for those lines shall be the maximum charge determined under paragraph (a) of this section divided by the customer's number of Centrex lines.

(f) [Reserved]

(g) [Reserved]

(h) [Reserved]

22. Amend § 69.154 by revising paragraph (a)(1) to read as follows:

**§ 69.154 Per-minute carrier common line charge.**

(a)* * *

(1) The per-minute rate using base period demand that would recover the maximum allowable carrier common line revenue as defined in § 61.46(d) of this chapter; or

* * * * *

23. Revise § 69.156 to read as follows:

**§ 69.156 Marketing expenses.**

Effective July 1, 2000, the marketing expenses formerly allocated to the common line and traffic sensitive baskets, and the switched services within the trunking basket pursuant to § 32.6610 of this chapter and § 69.403 will now be recovered in the CMT basket created pursuant to § 61.42(d)(1) of this chapter. These marketing expenses will be recovered through the elements outlined in §§ 69.152, 69.153 and 69.154.

24. Revise § 69.157 to read as follows:

**§ 69.157 Line port costs in excess of basic, analog service.**

To the extent that the costs of ISDN line ports, and line ports associated with other services, exceed the costs of a line port used for basic, analog service, local exchange carrier may recover the difference through a separate monthly end-user charge. As of June 30, 2000, these rates will be capped until June 30, 2005.

25. Add § 69.158 to read as follows:

**§ 69.158 Universal service end user charges.**

To the extent the company makes contributions to the Universal Service Support Mechanisms pursuant to §§ 54.706 and 54.709 of this chapter and the LEC seeks to recover some or all of the amount of such contribution, the LEC shall recover those contributions through a charge to end users other than Lifeline users. These contributions are not a part of any price cap baskets, and the charge to recover these contributions is not part of any other element established pursuant to part 69. Such a charge may be assessed on a per-line basis or as a percentage of interstate retail revenues, and at the option of the LEC it may be combined for billing purposes with other end user retail rate elements. A LEC opting to assess the USF end-user rate element on a per-line basis may apply that charge using the ''equivalency'' relationships established for the multi-line business PICC for Primary Rate ISDN service, as per § 69.153(d), and for Centrex lines, as per § 69.153(e).

[FR Doc. 00–15170 Filed 6–16–00; 12:38 pm]

BILLING CODE 6712–01–U

Federal Register

**Wednesday,**
**June 21, 2000**

**Part IV**

# Department of Housing and Urban Development

**24 CFR Part 24**

**Debarment, Suspension, and Limited Denial of Participation; Clarification of Procedures; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 24**

**[Docket No. FR–4505–F–01]**

**RIN 2501–AC61**

## Debarment, Suspension, and Limited Denial of Participation; Clarification of Procedures

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

**ACTION:** Final rule.

**SUMMARY:** This final rule clarifies two aspects of HUD's debarment, suspension, and limited denial of participation procedures. First, the rule clarifies that a debarring or suspending official may refer either disputed material facts or issues of law, or both to a hearing officer. Second, the rule clarifies the jurisdictional and procedural posture of a Limited Denial of Participation (LDP) when HUD subsequently issues a proposed debarment or suspension based on the same transaction(s) or conduct.

**DATES:** *Effective Date:* July 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dane M. Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, U.S. Department of Housing and Urban Development, 1250 Maryland Avenue, Suite 200, Washington, DC 20024; telephone (202) 708–2350 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background Information

HUD's current regulations at 24 CFR part 24, subparts C, D, and G, cover the administration of the debarment, suspension, and limited denial of participation (LDP) administrative remedies, respectively. Recent administrative decisions interpreting aspects of these regulations have indicated a need for additional clarification as to their intent and operation.

*a. Scope of Referral*

24 CFR 314(b)(2)(i) provides that a debarring official may refer ''disputed material facts and issues of law to a hearing officer for findings of fact *and* conclusions of law.'' Section 413(b)(3) provides similar authority to a suspending official. This rule clarifies that under § 24.314(b)(2)(i) and § 24.413(b)(3), the debarring or suspending official, or a designee, has complete discretion to: (1) refer only disputed material facts to a hearing officer for resolution; (2) provide facts to a hearing officer and request that the hearing officer only make conclusions of law based on those facts; or (3) request a hearing officer to make findings of fact *and* conclusions of law. The hearing officer's findings of fact or conclusions of law must then conform to the scope of the debarring or suspending official's referral.

*b. Transfer of Jurisdiction*

HUD's current regulation at 24 CFR 24.713(c) (entitled ''Effect of suspension or debarment on limited denial of participation'') covers the situation where HUD issues an LDP and then subsequently issues a proposed debarment or suspension based on the same transaction(s) or conduct. If a respondent contests the proposed debarment or suspension, § 24.713(c)(2) requires the consolidation of the LDP proceeding with the proposed debarment or suspension proceeding and requires the debarring or suspending official to issue a final decision for both causes. If the respondent does not contest the proposed debarment or suspension, § 24.713(c)(1) makes the final imposition of a debarment or suspension a final decision with respect to the LDP as well.

The intent of § 24.713(c) is to avoid separate LDP and debarment or suspension hearings, based on the same transaction(s) or conduct, coexisting for any period of time and to ensure that the consolidated proceeding is heard and decided under the debarment/suspension procedures. HUD revised its regulations governing debarments and suspensions in 1995 (60 FR 33049, June 26, 1995) to conform its procedures with other Federal agencies implementing the governmentwide common rule on debarments and suspensions. The intent of the 1995 revisions was to reduce the regulatory burden on HUD and participants in its programs by applying the revised procedures to all debarments and suspensions. Continuing to apply LDP procedures to a debarment or suspension into which an LDP had been consolidated under § 24.712(c)(2) would be inconsistent with that intent.

This final rule clarifies that if HUD issues an LDP and then subsequently issues a proposed debarment or suspension, which the debarring or suspending official determines is based on the same transaction(s) or conduct, and the respondent contests the proposed debarment or suspension, then the hearing officer responsible for hearing the LDP must immediately divest jurisdiction over the LDP and transfer the administrative record of the case to the debarring or suspending official. The debarring or suspending official will then issue a final decision for both the LDP and the proposed debarment or suspension, pursuant to the hearing procedures governing debarments and suspensions.

This rule also clarifies that, when a proposed debarment or suspension is issued following an LDP, during the 30 day period that a respondent is given under the regulations to contest the proposed debarment or suspension, all administrative proceedings on the LDP, including discovery, are automatically stayed. This again clarifies the intent of the regulations that at no time should there be two proceedings occurring on separate procedural tracks—one for an LDP and another for a debarment or suspension—based on the same transaction(s) or conduct.

### II. Small Entities and HUD Enforcement Actions

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847, approved March 29, 1996) (''SBREFA'') provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. On May 31, 1998 (63 FR 28214), HUD published a **Federal Register** notice describing HUD's actions on implementation of SBREFA.

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, *under appropriate circumstances,* waive civil penalties when a small entity violates a statute or regulation. Where penalties are determined appropriate, HUD's policy is to consider: (1) The nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks); (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity. Depending upon the circumstances surrounding the violation, it is not HUD's intent to put any individual or entity out of business by the penalties or settlement amounts paid to the Federal Government.

With respect to the issuance of an LDP, debarment, or suspension, HUD is cognizant that section 222 of the SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business

concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its May 21, 1998 notice, HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

## III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing the rule for effect, in accordance with our regulations on rulemaking at 24 CFR part 10. Part 10, however, provides for an exception to this general rule when HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is ''impracticable, unnecessary, or contrary to the public interest'' (24 CFR 10.1). HUD finds that good cause exists to publish this final rule for effect without first soliciting public comment because prior public procedure is unnecessary. This final rule only clarifies two aspects of HUD's debarment, suspension, and limited denial of participation procedures. This rule does not implement any substantive changes to these procedures.

## IV. Findings and Certifications

*Environmental Impact*

The clarifying revisions contained in this final rule do not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

*Regulatory Flexibility Act*

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. This final rule only clarifies two aspects of HUD's debarment, suspension, and limited denial of participation procedures. This rule does not implement any substantive changes to these procedures.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

*Federalism Impact*

This final 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 Executive Order 13132 (entitled ''Federalism'').

**List of Subjects in 24 CFR Part 24**

Administrative practice and procedure, Drug abuse, Government contracts, Government procurement, Grant programs, Loan programs, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD amends 24 CFR part 24 as follows:

## PART 24—GOVERNMENT DEBARMENT AND SUSPENSION AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORK-PLACE (GRANTS)

1. The authority citation for part 24 continues to read as follows:

**Authority:** 41 U.S.C. 701 *et seq.*; 42 U.S.C. 3535(d); E.O. 12549, 51 FR 6370, 3 CFR, 1986 Comp., p. 189; E.O. 12689, 54 FR 34131, 3 CFR, 1989 Comp., p. 235.

2. Revise paragraph (b)(2)(i) of § 24.314 to read as follows:

**§ 24.314 Debarring official's decision.**

* * * * *

(b) * * *

(2) * * *

(i) The debarring official may refer either disputed material facts or issues of law, or both to a hearing officer for either findings of fact or conclusions of law, or both.

3. Revise paragraph (b)(3) of § 24.413 to read as follows:

**§ 24.413 Suspending official's decision.**

* * * * *

(b) * * *

(3) The suspending official may refer either disputed material facts or issues of law, or both to a hearing officer for either findings of fact or conclusions of law, or both.

4. Revise paragraph (c) of § 24.713 to read as follows:

**§ 24.713 Opportunity to contest the limited denial of participation.**

* * * * *

(c) *Effect of suspension or debarment on limited denial of participation.* If a respondent has submitted a request for a hearing pursuant to paragraph (a) of this section, and if the respondent has also received, pursuant to subpart C or D of this part, a notice of proposed debarment or suspension based on the same transaction(s) or conduct as the limited denial of participation, as determined by the debarring or suspending official, the following rules apply:

(1) During the 30 day period after the respondent receives a proposed debarment or suspension during which the respondent may elect to contest the debarment under § 24.314(a), or the suspension under § 24.412(a), all proceedings in the limited denial or participation, including discovery, are automatically stayed.

(2) If the respondent does not contest the proposed debarment pursuant to § 24.313(a), or the suspension pursuant to § 24.412(a), the final imposition of the debarment or suspension shall also constitute a final decision with respect to those parts of the limited denial of participation based on the same transaction(s) or conduct as the debarment or suspension, as determined by the debarring or suspending official.

(3) If the respondent does contest the proposed debarment pursuant to § 24.313(a), or the suspension pursuant to § 24.412(a), then:

(i) Those parts of the limited denial of participation based on the same

transaction(s) or conduct as the debarment or suspension, as determined by the debarring or suspending official, and the debarment or suspension shall be immediately consolidated before the debarring or suspending official;

(ii) Jurisdiction of the hearing officer under 24 CFR part 24, subpart G, to hear those parts of the limited denial of participation based on the same transaction(s) or conduct as the debarment or suspension, as determined by the debarring or suspending official, shall be divested, and the hearing officer responsible for hearing the limited denial of participation shall transfer the administrative record to the debarring or suspending official; and

(iii) The debarring or suspending official shall hear the entire consolidated case under the procedures governing debarments and suspensions, and shall issue a final decision as to both the limited denial of participation and the debarment or suspension.

Dated: June 14, 2000.

**Andrew Cuomo,**

*Secretary.*

[FR Doc. 00–15684 Filed 6–20–00; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

**Wednesday,**
**June 21, 2000**

## Part V

# Department of Housing and Urban Development

**24 CFR Parts 25 and 30**
**Amendments to HUD's Mortgagee Review Board and Civil Money Penalty Regulations; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 25 and 30**

**[Docket No. FR–4308–F–02]**

**RIN 2501–AC44**

## Amendments to HUD's Mortgagee Review Board and Civil Money Penalty Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule makes conforming changes to HUD's regulations to reflect statutory changes made by the Multifamily Assisted Housing Reform and Affordability Act of 1997. These amendments are designed to strengthen HUD's enforcement authority under its insured housing programs. The final rule also makes several clarifying, non-substantive amendments to these regulations. This final rule follows publication of a February 23, 2000 interim rule. No public comments were received on the interim rule. Accordingly, HUD is adopting the February 23, 2000 interim rule without change.

**DATES:** *Effective Date:* July 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dane Narode, Deputy Chief Counsel for Administrative Proceedings, Departmental Enforcement Center, Room B–133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–2350 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background—The February 23, 2000 Interim Rule

On February 23, 2000 (65 FR 9084), HUD published an interim rule amending its regulations at 24 CFR part 25 (which establishes the procedures governing HUD's Mortgagee Review Board) and 24 CFR part 30 (which implements HUD's civil money penalty provisions). The February 23, 2000 interim rule updated these regulations to reflect statutory amendments made by sections 551 and 553 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (Title V of the Fiscal Year 1998 HUD Appropriations Act; Pub.L. 105–65, approved October 27, 1997) (referred to as the ''Multifamily Reform Act'' or the ''Act'').

The Multifamily Reform Act made several amendments to strengthen HUD's enforcement authority under the National Housing Act (12 U.S.C. 1701 *et seq.*), which establishes the statutory framework for HUD's insured housing programs. Section 551 of the Act provides that suspensions issued by the HUD Mortgagee Review Board are effective, without previous 30-day written notice of violation to the mortgagee, if there is sufficient evidence that immediate action is required to protect the financial interests of HUD or the public. Section 553 of the Multifamily Reform Act expands the list of persons and types of violations subject to a civil money penalty under HUD's insured housing programs.

In addition to implementing sections 551 and 553 of the Multifamily Reform Act, the February 23, 2000 interim rule also made several clarifying, non-substantive, amendments to HUD's regulations at 24 CFR parts 25 and 30. The first amendment clarified under what conditions HUD's Mortgagee Review Board may issue a suspension. The second amendment clarified the effect of a suspension or withdrawal issued by the Board. The third amendment clarified that the Assistant Secretary for Public and Indian Housing may initiate a civil money penalty under the section 184 Indian housing loan guarantee program.

A complete description of the amendments to 24 CFR parts 25 and 30 was provided in the preamble to the February 23, 2000 interim rule.

### II. This Final Rule

This final rule adopts the policies and procedures contained in the February 23, 2000 interim rule. The public comment period on the interim rule closed on April 24, 2000. HUD did not receive any public comments on the interim rule. Accordingly, this final rule adopts the February 23, 2000 interim rule without change.

### III. Other Enforcement-Related Amendments Made by the Multifamily Reform Act

In addition to the statutory amendments described above, the Multifamily Reform Act made several other revisions to HUD's enforcement authority under its programs. For example, section 561 of the Multifamily Reform Act expands the list of persons and types of violations subject to a civil money penalty under section 537 of the National Housing Act. Further, section 563 of the Multifamily Reform Act amends the United States Housing Act of 1937 (the statutory authority for HUD's public and assisted housing programs) to provide for the imposition of civil money penalties for noncompliance with Section 8 Housing Assistance Payment contracts. The Multifamily Reform Act directs that HUD implement these statutory amendments using notice and comment rulemaking procedures. Accordingly, the amendments made by sections 561 and 563 of the Multifamily Reform Act will be the subject of a separate HUD proposed rule.

### IV. Small Entities and HUD Enforcement Actions

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847, approved March 29, 1996) (''SBREFA'') provides, among other things, for agencies to establish specific policies or programs to assist small entities. Small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. On May 21, 1998 (63 FR 28214), HUD published a **Federal Register** notice describing HUD's actions on implementation of SBREFA.

Section 223 of SBREFA requires agencies that regulate the activities of small entities to establish a policy or program to reduce or, *under appropriate circumstances*, waive civil penalties when a small entity violates a statute or regulation. Where penalties are determined appropriate, HUD's policy is to consider: (1) The nature of the violation (the violation must not be one that is repeated or multiple, willful, criminal or poses health or safety risks), (2) whether the entity has shown a good faith effort to comply with the regulations; and (3) the resources of the regulated entity.

With respect to the imposition of civil money penalties, HUD is cognizant that section 222 of the SBREFA requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to ''work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel.'' To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices which are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

As HUD stated in its May 21, 1998 **Federal Register** notice, HUD intends to work with the Small Business Administration to provide small entities with information on the Fairness Boards and National Ombudsman program, at the time enforcement actions are taken, to ensure that small entities have the full means to comment on the enforcement activity conducted by HUD.

**V. Findings and Certifications**

*Environmental Impact*

In accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, this final rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

*Federalism Impact*

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final 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.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this final rule is not anticipated to have a significant economic impact on a substantial number of small entities. As discussed in this preamble, the rule makes conforming changes to HUD regulations in 24 CFR parts 25 and 30 to reflect statutory changes made to the National Housing Act by the Multifamily Reform Act. These changes are not discretionary on the part of HUD. These changes are applicable regardless of whether HUD revises its regulations to reflect these statutory amendments.

The purpose of the legislation is to grant additional enforcement tools to HUD to use against those who violate agreements and program requirements. The Multifamily Reform Act expanded the list of persons and the types of violations subject to civil money penalties under HUD's insured housing programs for the purpose of protecting the FHA insurance fund. To the extent that these statutory changes impact small entities it will be as a result of actions taken by small entities themselves—that is, violation of applicable program regulations and requirements.

The rule also makes three clarifying, non-substantive amendments to these regulations. These amendments do not impose new regulatory requirements, but codify existing HUD practice. Accordingly, HUD has determined that this final rule will have no adverse or disproportionate economic impact on small entities.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

**List of Subjects**

*24 CFR Part 25*

Administrative practice and procedure, Loan programs—housing and community development, Organization and functions (Government agencies).

*24 CFR Part 30*

Administrative practice and procedure, Loan programs—housing and community development, Mortgages, Penalties.

**PARTS 24 AND 30—[AMENDED]**

For the reasons discussed in the preamble, the interim rule amending 24 CFR part 25 and 24 CFR part 30, which was published at 65 FR 9084, is adopted as a final rule without change.

Dated: June 14, 2000.

**Andrew Cuomo,**

*Secretary.*

[FR Doc. 00–15683 Filed 6–20–00; 8:45 am]

BILLING CODE 4210–32–P

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 3293/P.L. 106–214**

To amend the law that authorized the Vietnam Veterans Memorial to authorize the placement within the site of the memorial of a plaque to honor those Vietnam veterans who died after their service in the Vietnam war, but as a direct result of that service. (June 15, 2000; 114 Stat. 335)

**H.R. 4489/P.L. 106–215**

Immigration and Naturalization Service Data Management Improvement Act of 2000 (June 15, 2000; 114 Stat. 337)

**Last List May 31, 2000**

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