



# Federal Register

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3-1-01

Vol. 66 No. 41

Pages 12843-12992

Thursday

Mar. 1, 2001



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

### WASHINGTON, DC

- WHEN:** Tuesday, April 17, 2001 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



# Contents

Federal Register

Vol. 66, No. 41

Thursday, March 1, 2001

## Agency for International Development

### NOTICES

Meetings:

International Food and Agricultural Development Board,  
12923

## Air Force Department

### NOTICES

Agency information collection activities:

Proposed collection; comment request, 12929–12930

Environmental statements; availability, etc.:

Base realignment and closure—

Homestead Air Force Base, FL, 12930

## Alcohol, Tobacco and Firearms Bureau

### RULES

Alcoholic beverages:

Denatured alcohol and rum formulas, 12853–12854

## Centers for Disease Control and Prevention

### NOTICES

Grants and cooperative agreements; availability, etc.:

Military deployments among military personnel, veterans,  
family members, and health care providers; health  
risk communication improvement strategies, 12933–  
12934

Traumatic Brain Injury Surveillance activities, 12935–  
12937

## Children and Families Administration

### NOTICES

Agency information collection activities:

Proposed collection; comment request, 12937–12938

## Commerce Department

See Export Administration Bureau

See International Trade Administration

See National Oceanic and Atmospheric Administration

### NOTICES

Agency information collection activities:

Submission for OMB review; comment request, 12923

## Commission of Fine Arts

### NOTICES

Meetings, 12928

## Commodity Futures Trading Commission

### NOTICES

Meetings; Sunshine Act, 12928–12929

## Defense Department

See Air Force Department

### RULES

Civilian health and medical program of uniformed services  
(CHAMPUS):

TRICARE program—

Family member dental plan; effective date delay,  
12855–12871

## Delaware River Basin Commission

### NOTICES

Water Code and Comprehensive Plan; water usage reporting  
and water metering requirements, 12930–12931

## Energy Department

### NOTICES

Grants and cooperative agreements; availability, etc.:

Technology Development with Independents Program,  
12931

## Environmental Protection Agency

### RULES

Acquisition regulations:

Notice to Proceed; letter contract to carry out emergency  
response actions, 12897–12902

Air pollution control:

Acid rain program—

Permits rule revision; industrial utility-units exemption  
removed, 12973–12978

Air programs:

Outer Continental Shelf regulations—

Alaska; consistency update, 12981–12985

Air programs; State authority delegations:

Tennessee, 12871–12872

Clean Air Act:

State and Federal operating permits programs—

Compliance certification requirements; amendments,  
12872–12877

### PROPOSED RULES

Air pollution control:

Acid rain program—

Permits rule revision; industrial utility-units exemption  
removed, 12978–12979

Air programs:

Outer Continental Shelf regulations—

Alaska; consistency update, 12985–12986

Clean Air Act:

State and Federal operating permits programs—

Compliance certification requirements; amendments,  
12916–12920

## Executive Office of the President

See Presidential Documents

## Export Administration Bureau

### RULES

Export administration regulations:

Yugoslavia; foreign policy export controls, 12845–12848

## Federal Aviation Administration

### RULES

Airworthiness standards:

Special conditions—

Gulfstream Aerospace Corp. G-1159 airplanes, 12843–  
12845

### PROPOSED RULES

Airworthiness directives:

Airbus, 12913–12915

## Federal Communications Commission

### RULES

Common carrier services:

Telecommunications Act of 1996; implementation—

Unauthorized changes of consumers' long distance  
carriers (slamming); subscriber carrier selection  
changes, 12877–12894

## Digital television stations; table of assignments:

Louisiana, 12895  
 South Dakota, 12894  
 Wisconsin, 12894–12895

## Radio stations; table of assignments:

Arizona, 12895–12896  
 Colorado, 12896  
 Various States, 12896–12897

## Television broadcasting:

Ownership attribution rules  
 Correction, 12897

**PROPOSED RULES**

## Radio stations; table of assignments:

Missouri, 12921–12922  
 Texas, 12920–12921

## Television stations; table of assignments:

Illinois, 12922

**Federal Election Commission****NOTICES**

Meetings; Sunshine Act, 12931

**Federal Trade Commission****PROPOSED RULES**

## Trade regulation rules:

Amplifiers utilized in home entertainment products;  
 power output claims, 12915–12916

**Fine Arts Commission**

*See* Commission of Fine Arts

**Food and Drug Administration****RULES**

## Administrative practice and procedure:

Meetings, correspondence, and public calendars  
 Effective date delay and correction, 12848–12850

## Human drugs:

Prescription drug marketing; effective date delay, 12850–  
 12853

**NOTICES**

## Agency information collection activities:

Reporting and recordkeeping requirements, 12938–12939

## Reports and guidance documents; availability, etc.:

Medical devices—  
 Clinical Laboratory Improvement Amendments of 1988  
 (CLIA) waiver criteria, 12939–12940

**Health and Human Services Department**

*See* Centers for Disease Control and Prevention

*See* Children and Families Administration

*See* Food and Drug Administration

*See* Health Care Financing Administration

*See* Health Resources and Services Administration

*See* National Institutes of Health

**NOTICES**

## Meetings:

Complementary and Alternative Medicine Policy, White  
 House Commission, 12932–12933

**Health Care Financing Administration****NOTICES**

## Agency information collection activities:

Proposed collection; comment request, 12940

**Health Resources and Services Administration****NOTICES**

## Grants and cooperative agreements; availability, etc.:

Children's Hospitals Graduate Medical Education  
 Payment Program, 12940–12954

**Interior Department**

*See* Land Management Bureau

*See* Minerals Management Service

*See* National Indian Gaming Commission

**Internal Revenue Service****RULES**

## Income taxes:

Treasury securities and other debt instruments,  
 reopenings; original issue discount  
 Correction, 12853

**PROPOSED RULES**

## Income taxes:

Space and ocean activities and communication; sources  
 of income  
 Hearing change, 12916

**NOTICES**

## Meetings:

Citizen Advocacy Panels—  
 Brooklyn District, 12971

**International Trade Administration****NOTICES**

## Agency information collection activities:

Proposed collection; comment request, 12924

## Antidumping:

Corrosion-resistant carbon steel flat products and cut-to-  
 length carbon steel plate from—  
 Canada, 12924  
 Honey from—  
 Argentina and China, 12924–12925  
 Oil country tubular goods from—  
 Korea, 12925–12926  
 Porcelain-on-steel cookware from—  
 Mexico, 12926–12927  
 Silicon metal from—  
 China, 12927–12928

**International Trade Commission****NOTICES**

## Import investigations:

Folding gift boxes from—  
 China, 12957–12958  
 Grain-oriented silicon electrical steel from—  
 Italy and Japan, 12958  
 Wheat gluten, 12958–12959

**Justice Department****RULES**

## National Instant Criminal Background Check System:

Firearms transactions; information retention  
 Effective date delay, 12854–12855

**NOTICES**

## Privacy Act:

Systems of records; effective date delay, 12959

**Land Management Bureau****NOTICES**

## Closure of public lands:

Colorado, 12954–12955

## Meetings:

Resource Advisory Councils—  
 Eastern Montana, 12955

## Realty actions; sales, leases, etc.:

New Mexico, 12955

**Maritime Administration****NOTICES**

Coastwise trade laws; administrative waivers:

ANDANTE, 12966–12967

DRAGONLORD, 12967–12968

HERON, 12968

SORTILEGE, 12968–12969

SOUTHERN CROSS, 12969–12970

**Minerals Management Service****NOTICES**

Agency information collection activities:

Proposed collection; comment request, 12955–12957

Outer Continental Shelf; oil, gas, and sulphur operations:

Industry Awards Program and Luncheon, 12957

**National Archives and Records Administration****NOTICES**

Electronic copies previously covered by General Records

Schedule 20; records schedules availability and

comment request, 12959–12961

**National Indian Gaming Commission****PROPOSED RULES**

Management contract provisions:

Minimum internal control standards, 12916

**National Institutes of Health****NOTICES**

Meetings:

National Institute of General Medical Sciences, 12954

National Institute on Drug Abuse, 12954

**National Oceanic and Atmospheric Administration****RULES**

Fishery conservation and management:

Alaska; fisheries of Economic Exclusive Zone—

Gulf of Alaska groundfish, 12912

Northeastern United States fisheries—

Scup and black sea bass, 12902–12912

**NOTICES**

Agency information collection activities:

Proposed collection; comment request, 12928

**Nuclear Regulatory Commission****NOTICES**

Meetings:

Nuclear Waste Advisory Committee, 12963–12964

Reactor Safeguards Advisory Committee, 12964–12965

*Applications, hearings, determinations, etc.:*

Stork/Twin City Testing, 12961–12962

UMETCO Minerals Corp., 12962–12963

**Postal Service****NOTICES**

Meetings; Sunshine Act, 12965

**Presidential Documents****PROCLAMATIONS**

*Special observances:*

American Red Cross Month (Proc. 7408), 12987–12990

Irish-American Heritage Month (Proc. 7409), 12991–12992

**Public Health Service**

*See* Centers for Disease Control and Prevention

*See* Food and Drug Administration

*See* Health Resources and Services Administration

*See* National Institutes of Health

**Small Business Administration****NOTICES**

Grants and cooperative agreements; availability, etc.:

Paul D. Coverdell Drug-Free Workplace Program, 12965–12966

**State Department****NOTICES**

Agency information collection activities:

Submission for OMB review; comment request, 12966

**Transportation Department**

*See* Federal Aviation Administration

*See* Maritime Administration

**Treasury Department**

*See* Alcohol, Tobacco and Firearms Bureau

*See* Internal Revenue Service

**NOTICES**

Meetings:

Customs Service Commercial Operations Treasury

Advisory Committee, 12970

**Separate Parts In This Issue****Part II**

Environmental Protection Agency, 12973–12979

**Part III**

Environmental Protection Agency, 12981–12986

**Part IV**

The President, 12987–12992

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**3 CFR**

## Proclamations:

7408.....12989  
7409.....12991

**14 CFR**

25.....12843

**Proposed Rules:**

39.....12913

**15 CFR**

738.....12845  
740.....12845  
744.....12845  
746.....12845

**16 CFR****Proposed Rules:**

432.....12915

**21 CFR**

10.....12848  
14.....12848  
16.....12848  
203.....12850  
205.....12850

**25 CFR****Proposed Rules:**

542.....12916

**26 CFR**

1.....12853

**Proposed Rules:**

1.....12916

**27 CFR**

19.....12853  
21.....12853

**28 CFR**

25.....12854

**32 CFR**

199.....12855

**40 CFR**

55.....12982  
60.....12871  
70.....12872  
71.....12972  
72.....12974  
74.....12974  
78.....12974

**Proposed Rules:**

55.....12986  
70.....12916  
71.....12916  
72.....12979  
74.....12979  
78.....12979

**47 CFR**

64.....12917  
73 (7 documents) .....12894,  
12895, 12896, 12897

**Proposed Rules:**

73 (4 documents) .....12920,  
12921, 12922

**48 CFR**

1516.....12897

**50 CFR**

648.....12902  
679.....12912

# Rules and Regulations

Federal Register

Vol. 66, No. 41

Thursday, March 1, 2001

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

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 25

[Docket No. NM183; Special Conditions No. 25-173-SC]

#### Special Conditions: Gulfstream G-1159; High-Intensity Radiated Fields (HIRF)

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

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

**SUMMARY:** These special conditions are issued for Gulfstream Aerospace Corporation G-1159 airplanes modified by DaimlerChrysler Aviation, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Electronic Primary Flight Display systems that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is February 16, 2001. Comments must be received on or before April 2, 2001.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM-114), Docket No. NM183, 1601 Lind Avenue SW., Renton, Washington 98055-4056;

or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM183*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Meghan Gordon, FAA, Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (425) 227-2138; facsimile (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM183." The postcard will be date stamped and returned to the commenter.

##### Background

On April 3, 2000, DaimlerChrysler Aviation, Inc., 7002 Highland Rd., Waterford, MI, applied for a Supplemental Type Certificate (STC) to modify Gulfstream Aerospace Corporation G-1159 airplanes. The G-1159 is a small transport category airplane. The G-1159 airplanes are powered by two Rolls Royce Spey RB (163) 511-8 turbofans with a maximum takeoff weight of 57,500 pounds. This

aircraft operates with a 2-pilot crew and can hold up to 19 passengers. The modification incorporates the installation of a Honeywell Primus Epic Control Display System for Retrofit applications (CDS-R). The CDS-R is a replacement for the existing Analog Flight Instrumentation, while also providing additional functional capability and redundancy in the system. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

##### Type Certification Basis

Under the provisions of 14 CFR 21.101, DaimlerChrysler Aviation Inc. must show that the Gulfstream Aerospace Corporation G-1159 airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference Type Certificate No. A12EA, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations included in the certification basis for the Gulfstream Aerospace Corporation G-1159 airplanes include CAR 4b dated December 31, 1953, including Amendments 4b-1 thru 4b-14, Special Regulations SR422B and SR450A, and Special Conditions in Attachment A of FAA letter to Grumman dated September 27, 1965, plus 14 CFR 25.1325 (effective February 1, 1965); 25.175 (effective March 1, 1965) in lieu of 4b.155(b), plus additional requirements listed in the type certificate data sheet that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 4b and part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream Aerospace Corporation G-1159 airplanes modified by DaimlerChrysler Aviation Inc. because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, these Gulfstream Aerospace Corporation G-1159 airplanes must comply with the fuel vent and exhaust

emission requirements of part 34 and the noise certification requirements of part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2).

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

**Novel or Unusual Design Features**

As noted earlier, the Gulfstream Aerospace Corporation G-1159 airplanes modified by DaimlerChrysler Aviation Inc. will incorporate dual Electronic Primary Flight Display systems that will perform critical functions. This system may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the

adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

**Discussion**

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

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Aerospace Corporation G-1159 airplanes modified by DaimlerChrysler Aviation Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

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

With the trend toward increased power levels from ground-based transmitters, plus the advent of space

and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

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

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.
  - a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.
  - b. Demonstration of this level of protection is established through system tests and analysis.
2. A threat external to the airframe of the following field strengths for the frequency ranges indicated. Both peak and average field strength components from the Table are to be demonstrated.

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

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

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

**Applicability**

As discussed above, these special conditions are applicable to Gulfstream Aerospace Corporation G-1159 airplanes modified by DaimlerChrysler Aviation Inc. Should DaimlerChrysler Aviation Inc. apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same

novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on the Gulfstream Aerospace Corporation G-1159 airplanes modified by

DaimlerChrysler Aviation Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

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

#### List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

#### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Gulfstream Aerospace Corporation G-1159 airplanes modified by DaimlerChrysler Aviation Inc.

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

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

Issued in Renton, Washington, on February 16, 2001.

**Donald L. Riggins,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*  
[FR Doc. 01-4675 Filed 2-28-01; 8:45 am]

**BILLING CODE 4910-13-M**

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

#### 15 CFR Parts 738, 740, 744, and 746

[Docket No. 010208031-1031-01]

RIN 0694-AC36

#### Exports to the Federal Republic of Yugoslavia; Revision of Foreign Policy Controls

**AGENCY:** Bureau of Export Administration, Commerce.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Export Administration Regulations (EAR) by removing the additional license requirements imposed on Serbia in May 1999. However, a license is required for all exports and reexports by U.S. persons of any item subject to the EAR to persons listed pursuant to Executive Order 13088, as amended by Executive Order 13192 of January 17, 2001. The persons subject to sanctions under amended Executive Order 13088 include Slobodan Milosevic, his family, his close associates, and those indicted for war crimes. These sanctioned persons are identified on the list of specially designated nationals and blocked persons maintained by the Department of the Treasury's Office of Foreign Assets Control and identified by the bracketed suffix initials [FRYM]. Controls are maintained under the EAR on arms and related materiel to the Federal Republic of Yugoslavia (Serbia and Montenegro) consistent with United Nations Security Council Resolution 1160 of March 3, 1998.

**DATES:** This rule is effective March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Brian Nilsson, Office of Strategic Trade and Foreign Policy Controls, Telephone: (202) 482-4196.

#### SUPPLEMENTARY INFORMATION:

##### Background

Executive Order 13088 of June 9, 1998, as amended by Executive Order 13121 on April 30, 1999, imposed, among other measures, comprehensive U.S. export and reexport prohibitions on the Federal Republic of Yugoslavia

(Serbia and Montenegro). On May 4, 1999, the Bureau of Export Administration (BXA) issued a final rule imposing a license requirement for exports and reexports to Serbia of all items subject to the EAR and a case-by-case review of applications with a presumption of denial for other than humanitarian items. These measures were intended to deter Serbia's human rights offenses against ethnic Albanians in Kosovo and to prevent the expansion of the ethnic conflict. BXA's May 4, 1999 rule did not impose similar comprehensive controls on exports or reexports to Montenegro.

Effective January 19, 2001, Executive Order 13192 amended Executive Order 13088 to revoke previously imposed prohibitions, including those on exports and reexports. BXA is taking action under its export control authorities consistent with amended Executive Order 13088. Specifically, this rule removes the additional license requirements imposed under the EAR by the May 4, 1999, rule on exports and reexports to Serbia, and thus restores Serbia to the export control status it had prior to May 4, 1999. However, persons listed in the Annex to Executive Order 13192, as well as persons designated by the Secretary of the Treasury, in consultation with the Secretary of State pursuant to that order, are subject to sanctions administered by the Department of the Treasury's Office of Foreign Assets Control. Exports and reexports of any item subject to the EAR by a U.S. person to a person designated pursuant to amended Executive Order 13088 are subject to a license requirement and a licensing policy of denial. These sanctioned persons are included on a list of specially designated nationals and blocked persons (SDNs) maintained by the Department of the Treasury, Office of Foreign Assets Control (OFAC) and identified by the bracketed suffix initials [FRYM]. To obtain additional information regarding the list of SDNs, contact OFAC at telephone number 202/622-2520. BXA provisions regarding these sanctioned persons are included in new section 744.16 of the EAR.

This rule eliminates the distinctions previously applicable to Serbia, Kosovo and Montenegro, which had been established by the final rule of November 5, 1999, for export control purposes. With the publication of this rule, Serbia (including the province of Kosovo) and Montenegro will be listed together as the Federal Republic of Yugoslavia (Serbia and Montenegro) for License Exception eligibility purposes, as members of "Country Group B" (see Supplement No. 1 to part 740),

“Computer Tier 3” (see § 740.7), and in the “Commerce Country Chart” (see Supplement No. 1 part 738).

Note that the arms embargo mandated by United Nations Security Council Resolution 1160 of March 3, 1998 remains in effect. This embargo prohibits the sale or supply of arms and arms-related items to the Federal Republic of Yugoslavia (Serbia and Montenegro), including those controlled under the EAR for crime control and regional stability reasons.

A foreign policy report on the new controls imposed by this rule on designated persons pursuant to amended Executive Order 13088 was submitted to the Congress on February 23, 2001.

**Rulemaking Requirements**

1. This rule was determined to be not significant for purposes of Executive Order 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act (P.R.A.) of 1995 (U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 45 minutes per manual submission on form BXA-748P and 40 minutes per electronic submission. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the P.R.A., unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United

States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form.

Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sheila Quarterman, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

**List of Subjects**

*15 CFR Part 738*

Administrative practice and procedure, Exports, Foreign trade.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Foreign trade, Reporting and Recordkeeping requirements.

*15 CFR Part 744*

Exports, Foreign trade, Reporting and recordkeeping requirements.

*15 CFR Part 746*

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 738, 740, 744, and 746 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

1. The authority citation for part 738 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; Public Law No. 106-508; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994

Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

2. The authority citation for part 740 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; Public Law No. 106-508; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

3. The authority citation for part 744 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; Public Law No. 106-508; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); E.O. 13192 of January 17, 2001, 66 FR 7379 (January 23, 2001); Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

4. The authority citation for Part 746 is revised to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; Public Law No. 106-508; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 3, 2000 (65 FR 48347, August 8, 2000).

**PART 738—[AMENDED]**

5. Supplement No. 1 to Part 738 is amended by removing the entries “Kosovo (Serbian province of)” and “Montenegro”, by revising the entry heading “Serbia (not including Kosovo)” to read “Yugoslavia (Serbia and Montenegro), Federal Republic of”, and by revising the newly designated “Yugoslavia (Serbia and Montenegro), Federal Republic of” row, to read as follows:

**Supplement No. 1 to Part 738— (Commerce Country Chart)**

**COMMERCE COUNTRY CHART—REASON FOR CONTROL**

Countries	Chemical & biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Firearms convention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Yugoslavia (Serbia and Montenegro), Federal Republic of <sup>1</sup> .....	X	X		X		X	X	X	X	X		X	X	X		

<sup>1</sup> This country is subject to United Nations Sanctions. See part 746 of the EAR for additional OFAC licensing requirements that may apply to your proposed transaction.

**PART 740—[AMENDED]**

6. Section 740.7 is amended by revising paragraph (d)(1) to read as follows:

**§ 740.7 Computers (CTP).**

\* \* \* \* \*

(d) *Computer Tier 3—(1) Eligible countries.* The countries that are eligible to receive exports and reexports under this License Exception are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Bulgaria, Cambodia, China (People's Republic of), Comoros, Croatia, Djibouti, Egypt, and Yugoslavia (Serbia and Montenegro), Federal Republic of, Georgia, India, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Latvia, Lebanon, Lithuania, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, Yemen and Yugoslavia. As of May 19, 2001, Lithuania moves to Computer Tier 1.

\* \* \* \* \*

7. Supplement No. 1 to part 740 is amended by removing "Kosovo (Serbian province of)" and "Montenegro" from the list of "Country Group B" countries and by adding, in alphabetical order, "Yugoslavia (Serbia and Montenegro), Federal Republic of".

**PART 744—AMENDED**

8. Part 744 is amended by adding new section 744.16 to read as follows:

**§ 744.16 Restrictions on exports and reexports by U.S. persons to specially designated persons on the list of Specially Designated Nationals identified by the bracketed suffix initials [FRYM].**

BXA maintains restrictions on exports and reexports of any item subject to the EAR by U.S. persons to persons designated pursuant to Executive Order 13088 of June 9, 1998, as amended by Executive Order 13192 of January 17, 2001 (Executive Order 13088, as amended). These designated persons include individuals listed in the Annex to Executive Order 13192, as well as persons designated by the Secretary of the Treasury, in consultation with the Secretary of State pursuant to that order (e.g., the former President of the Federal Republic of Yugoslavia, Slobodan Milosevic; his close associates; persons determined to be under open indictment by the International Criminal Tribunal for the former Yugoslavia; and persons determined to have sought, or to be

seeking, to maintain or reestablish illegitimate control over the political processes or economic resources of the Federal Republic of Yugoslavia (Serbia and Montenegro)). Persons designated pursuant to Executive Order 13088, as amended, are included on the list of Specially Designated Nationals maintained by the Department of the Treasury's Office of Foreign Assets Control (OFAC) and identified by the bracketed suffix initials [FRYM]. The requirements set forth in this section further the objectives of Executive Order 13088, as amended.

(a) *License requirements.* (1) A license is required for all exports and reexports of any item subject to the EAR by a U.S. person to a person on the list of Specially Designated Nationals maintained by OFAC and identified by the bracketed initials [FRYM].

(2) A U.S. person may also be required to seek separate authorization from OFAC for an export or reexport to a designated person identified by the bracketed initials [FRYM].

(b) *License policy.* Applications for exports and reexports of any item subject to the EAR by a U.S. person to a Specially Designated National identified by the bracketed initials [FRYM] will be reviewed with a general policy of denial.

**PART 746—[AMENDED]**

9. Section 746.9 is revised to read as follows:

**§ 746.9 The Federal Republic of Yugoslavia (Serbia and Montenegro).**

United Nations Security Council Resolution 1160 of March 31, 1998 provides that all member States shall prevent the sale or supply to the Federal Republic of Yugoslavia, including Kosovo, by their nationals or from their territories or using their flag vessels and aircraft, of arms and related materiel of all types, such as weapons and ammunition, military vehicles and equipment and spare parts for the aforementioned, and shall prevent the arming and training for terrorist activities there. Executive Order 12918 of May 26, 1994 (3 CFR, 1994 comp., p. 899) authorizes the Secretary of State and the Secretary of Commerce, under section 5 of the United Nations Participation Act and other authorities available to the respective Secretaries, to take all actions necessary to implement any arms embargo mandated by resolution of the UNSC.

(a) *License requirements.* (1) Under Executive Order 12918 of May 26, 1994, and in conformity with UNSC Resolution 1160 of March 31, 1998, an embargo applies to the sale or supply to

the Federal Republic of Yugoslavia (Serbia and Montenegro), of arms and related materiel of all types and regardless of origin, such as weapons and ammunition, military vehicles and equipment, and spare parts for such items. You will, therefore, need a license for the sale, supply or export to the Federal Republic of Yugoslavia (Serbia and Montenegro) from the United States of embargoed items, as listed in paragraphs (a)(1)(i) and (ii) of this section. You will also need a license for the sale, supply, export or reexport to the Federal Republic of Yugoslavia (Serbia and Montenegro) of such items by any U.S. person in any foreign country or other location. (Reexport controls imposed by this embargo apply only to reexports by U.S. persons. Reexport controls on U.S.-origin items to the Federal Republic of Yugoslavia (Serbia and Montenegro) set forth in other parts of the EAR remain in effect.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to the Federal Republic of Yugoslavia (Serbia and Montenegro) any such items. These requirements apply to the following items, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the "License Requirements" section of the applicable ECCN.

(ii) Items described by ECCNs ending in "018"; and 0A978, 0A979, 0A982, 0A983, 0A984, 0A985, 0A986, 0A987, 0A988, 0A989, 0B986, 0E982, 0E984, 1A005, 1A984, 1A985, 1C992.b.-k., 2A993, 3A980, 3A981, 3D980, 3E980, 4A980, 4D980, 4E980, 5A980, 6A002, 6A003.b.3 and b.4, 6E001, 6E002, 9A980, and 9A991.a.

(2) *Date of embargo.* The licensing requirements in paragraph (a)(1) of this section were effective on July 14, 1998, except for ECCN 0E982, which took effect on September 13, 2000.

(b) *Licensing policy.* Applications for export or reexport of all items listed in paragraphs (a)(1)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 1160, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to the appropriate date referred to in paragraph (a)(2) of this section, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(c) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains related controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120 through 130). You should also contact the Department of the Treasury's Office of Foreign Assets Control concerning any restrictions which might apply to U.S. persons involving financial transactions or dealings with the Federal Republic of Yugoslavia (Serbia and Montenegro).

Dated: February 26, 2001.

**Matthew S. Borman,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 01-5007 Filed 2-28-01; 8:45 am]

BILLING CODE 3510-33-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Parts 10, 14, and 16

[Docket No. 98N-1042]

#### Revision of Administrative Practices and Procedures; Meetings and Correspondence; Public Calendars; Partial Stay, Amendments, and Correction

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

**ACTION:** Final rule; partial stay, amendments, and correction.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** of January 24, 2001 (66 FR 7702), this action temporarily stays until April 23, 2001, the effectiveness of the rule entitled "Revision of Administrative Practices and Procedures; Meetings and Correspondence, Public Calendars" published in the **Federal Register** of January 22, 2001 (66 FR 6465). The Food and Drug Administration (FDA) is also correcting an error in the docket number that appeared in the **Federal Register** of January 22, 2001, final rule.

**DATES:** This final rule is effective from January 22, 2001, to April 22, 2001. The correction to the docket number is effective January 22, 2001.

**FURTHER INFORMATION CONTACT:** Carol A. Kimbrough, Office of Policy (HF-26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3480.

**SUPPLEMENTARY INFORMATION:** The final rule made the regulations relating to

meetings, correspondence, and the agency's public calendar more concise and understandable to the public, minimized confusion about publicly available information concerning agency meetings, provided more effective disclosure of such information, and allowed FDA to reallocate resources to areas of more urgent public health need. To the extent that 5 U.S.C. 553 applies to this partial stay of effective date, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3). Seeking public comment is impracticable, unnecessary and contrary to the public interest. The partial stay of effective date is necessary to give Department of Health and Human Services officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. Seeking prior public comment on this partial stay and amendments would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations.

In FR Doc. 01-1566 appearing on page 6465 in the **Federal Register** of Monday, January 22, 2001, the following correction is made: On page 6465, in the third column, in the fifth line, "[Docket No. 98-1042]" is corrected to read "[Docket No. 98N-1042]".

As stated in the summary, the rule is stayed until April 23, 2001, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** of January 24, 2001. Because the January 22, 2001, rule entitled "Revision of Administrative Practices and Procedures; Meetings and Correspondence, Public Calendars" inadvertently published with an immediate effective date, the mechanism for delaying the effective date is in some instances shown below to temporarily amend the rule to return to the provisions it contained before January 22, 2001.

For the reasons set forth in this document, FDA amends 21 CFR chapter I as follows:

## PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

1. The authority citation for 21 CFR part 10 continues to read as follows:

**Authority:** 5 U.S.C. 551-558, 701-706; 15 U.S.C. 1451-1461; 21 U.S.C. 141-149; 321-397, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

### § 10.30 [Amended]

2. Section 10.30(i)(6) is amended by removing "§ 10.65(f)" and by adding in its place "§ 10.65(h)" from January 22, 2001, to April 22, 2001.

### § 10.33 [Amended]

3. Section 10.33(k)(6) is amended by removing "§ 10.65(f)" and by adding in its place "§ 10.65(h)" from January 22, 2001, to April 22, 2001.

### § 10.35 [Amended]

4. Section § 10.35(h)(6) is amended by removing "§ 10.65(f)" and by adding in its place "§ 10.65(h)" from January 22, 2001, to April 22, 2001.

### § 10.40 [Amended]

5. Section 10.40(g)(7) is amended by removing "§ 10.65(f)" and by adding in its place "§ 10.65(h)" from January 22, 2001, to April 22, 2001.

### § 10.65 [Stayed]

6. Section 10.65 is stayed from January 22, 2001, to April 22, 2001.

7. Section 10.65a is added to subpart B from January 22, 2001, to April 22, 2001, to read as follows:

#### § 10.65a Meetings and correspondence.

(a) In addition to public hearings and proceedings established under this part and other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of FDA and an interested person outside FDA on a matter within the jurisdiction of the laws administered by the Commissioner. Action on meetings and correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(b) The Commissioner may conclude that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before FDA, at which any interested person may participate.

(1) The Commissioner shall give public notice through the public calendar described in § 10.100(a) of the time and place of the meeting and of the matters to be discussed, and may also publish notice of the meeting.

(2) The meeting will be informal, i.e., any interested person may attend and participate in the discussion without

prior notice to the agency unless the notice of the meeting specifies otherwise.

(3) No official transcript or recording of the meeting will be made unless it appears to the agency that it will be useful. A written memorandum summarizing the substance of the meeting will be prepared by an FDA representative in all cases.

(c) A meeting with a person outside the Department, including a person in the executive or legislative branch of the Federal Government, concerning a pending court case, administrative hearing, or other regulatory action or decision, which involves more than a brief description of the matter, is to be summarized in a written memorandum, which is filed in the administrative file on the matter.

(d) Every person outside the Federal Government may request and obtain a private meeting with a representative of FDA in agency offices to discuss a matter.

(1) The person requesting a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom there is a commercial arrangement within the meaning of § 20.81(a). Neither FDA nor any other person may require the attendance of a person who is not an employee of the executive branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and FDA.

(2) FDA will determine which representatives of the Agency will attend the meeting. The person requesting the meeting may request but not require or preclude the attendance of a specific FDA employee.

(3) Whenever appropriate (e.g., the meeting involves a matter covered by paragraph (c) of this section or other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(4) A person who wishes to attend a private meeting, but who either is not permitted to attend by the person requesting the meeting or by FDA or who cannot attend because the meeting is conducted by telephone, may obtain a separate meeting with FDA to discuss the same matter or an additional matter.

(e) FDA employees have a responsibility to meet with all segments of the public to promote the objectives of the laws administered by the Agency. In pursuing this responsibility the

following general policy applies where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the Agency.

(1) A person outside the executive branch may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate, but may do so where it is in the public interest and will promote the objectives of the act.

(2) The agency representative may request that the meeting be open if that would be in the public interest. The agency representative may decline to participate in a meeting held as a private meeting if that will best serve the public interest.

(3) An agency representative may not knowingly participate in a meeting which is closed on the basis of sex, race, or religion.

(4) A meeting, whether open or closed, is subject to paragraph (d)(3) of this section with respect to memoranda summarizing the substance of the meeting.

(f) Representatives of FDA may initiate a meeting or correspondence with any person outside the Federal Government on any matter concerning the laws administered by the Commissioner.

(1) A meeting initiated by FDA representatives which involves a small number of interested persons, for example, a meeting with a petitioner or with two manufacturers of a particular product which requires additional testing or with a trade association employee to discuss an industry labeling problem, may be a private meeting. A meeting initiated by FDA representatives which involves a large number of interested persons, for example, 10 manufacturers of an ingredient in a discussion of appropriate testing or labeling, must be held as an open conference or meeting under paragraph (b) of this section.

(2) Whenever appropriate (e.g., the meeting involves a matter covered by paragraph (c) of this section or another important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(g) A person who participates in a meeting described in paragraphs (b) through (f) of this section may also prepare and submit to FDA for inclusion in the administrative file a written

memorandum summarizing the substance of the meeting.

(h) Memoranda of meetings prepared by an FDA representative or by any other person and all correspondence which relate to a matter pending before the agency will promptly be filed in the administrative file of the proceeding.

(i) A meeting with a representative of Congress relating to a pending or potential investigation, inquiry, or hearing by a congressional committee or a Member of Congress will be summarized in a written memorandum which is to be forwarded to the Food and Drug Administration, Office of Legislative Affairs. This provision does not restrict the right of an agency employee to participate in the meeting.

(j) A meeting of an advisory committee is subject to the requirements of part 14.

(k) Under 42 U.S.C. 2631(a)(8), a log or summary is to be made of all meetings between representatives of FDA and industry and other interested parties to implement the Radiation Control for Health and Safety Act of 1968.

#### § 10.100 [Stayed]

8. Section 10.100 is stayed from January 22, 2001, to April 22, 2001.

9. Section 10.100a is added to subpart B from January 22, 2001, to April 22, 2001, to read as follows:

#### § 10.100a Public calendars.

(a) *Prospective public calendar of public proceedings.* (1) A public calendar will be prepared and made publicly available each week showing, to the extent feasible, for the following 4 weeks, the public meetings, conferences, hearings, advisory committee meetings, seminars, and other public proceedings of FDA, and other significant public events involving FDA, e.g., congressional hearings.

(2) A copy of this public calendar will be placed on public display in the following places:

- (i) Dockets Management Branch.
- (ii) Office of the Associate Commissioner for Public Affairs.
- (iii) A central place in each center.
- (iv) A central place in each field office.

(v) A central place at the National Center for Toxicological Research.

(b) *Retrospective public calendar of meetings.* (1) A public calendar will be prepared and made publicly available each week showing for the previous week meetings with persons outside the executive branch and other significant events involving the representatives of FDA designated under paragraph (b)(3) of this section, but telephone

conversations will be included on an optional basis and meetings with the working press, except for "house organs" (i.e., publications of firms that manufacture or distribute regulated products, or industry associations), and with on-site contractors will not be included. Meetings with members of the judiciary, representatives of Congress, or staffs of congressional committees will be included when the meeting relates to a pending court case, administrative hearing, or other regulatory action or decision and involves more than a brief description of the matter.

(2) The calendar will include all meetings, conferences, seminars, social events sponsored by the regulated industry, and speeches. The calendar will specify the date and the person and subject matter involved. When more than one FDA representative is in attendance, only the presiding or head representative will report the meeting on the public calendar. If a large number of persons is involved, the name of each need not be specified. Meetings that would prejudice law enforcement activities (e.g., a meeting with an informant) or invade privacy (e.g., a meeting with a candidate for possible employment in FDA) will not be reported.

(3) The following FDA representatives and their deputies are subject to the requirements of paragraphs (b)(1) and (2) of this section:

- (i) Commissioner of Food and Drugs.
- (ii) Deputy Commissioner.
- (iii) Associate Commissioners.
- (iv) Executive and Special Assistants to the Commissioner.
- (v) [Reserved]
- (vi) Director, National Center for Toxicological Research.
- (vii) Center Directors.
- (viii) Chief Counsel for the Food and Drug Administration, or any representative of that office attending on behalf of the Chief Counsel.

(4) A copy of the public calendar will be placed on public display in the following places:

- (i) Dockets Management Branch.
- (ii) Office of the Associate Commissioner for Public Affairs.
- (iii) A central place in each center.
- (iv) A central place in each field office.
- (v) A central place at the National Center for Toxicological Research.

#### **PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE**

10. The authority citation for 21 CFR part 14 continues to read as follows:

**Authority:** 5 U.S.C. App. 2; 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394,

467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b, 264.

11. Section 14.20 is amended by adding paragraph (e) from January 22, 2001, to April 22, 2001, to read as follows:

#### **§ 14.20 Notice of hearing before an advisory committee.**

\* \* \* \* \*

(e) All advisory committee meetings are to be included on the public calendar described in § 10.100(a).

#### **PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION**

12. The authority citation for 21 CFR part 16 continues to read as follows:

**Authority:** 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

13. Section 16.60 is amended by adding paragraph (a)(3) from January 22, 2001, to April 22, 2001, to read as follows:

#### **§ 16.60 Hearing procedure.**

(a) \* \* \*

(3) If the hearing is a public hearing, it will be announced on the public calendar described in § 10.100(a) whenever feasible, and any interested person who attends the hearing may participate to the extent of presenting relevant information.

\* \* \* \* \*

Dated: February 23, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 01–4962 Filed 2–28–01; 8:45 am]

**BILLING CODE 4160–01–S**

#### **DEPARTMENT OF HEALTH AND HUMAN SERVICES**

#### **Food and Drug Administration**

#### **21 CFR Parts 203 and 205**

**[Docket No. 92N–0297]**

**RIN 0905–AC81**

#### **Prescription Drug Marketing Act of 1987; Prescription Drug Amendments of 1992; Policies, Requirements, and Administrative Procedures; Delay of Effective Date**

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

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is further delaying, until April 1, 2002, the

effective date regarding certain requirements of the final rule published in the **Federal Register** of December 3, 1999 (64 FR 67720). The final rule implements the Prescription Drug Marketing Act of 1987 (PDMA), as modified by the Prescription Drug Amendments of 1992 (PDA), and the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). FDA is further delaying the effective date for certain requirements in the PDMA final rule relating to wholesale distribution of prescription drugs by distributors that are not authorized distributors of record, and distribution of blood derivatives by entities that meet the definition of a "health care entity" in the final rule. In the **Federal Register** of May 3, 2000 (65 FR 25639), the agency previously delayed until October 1, 2001, the effective date of these requirements. The other provisions of the final rule became effective on December 4, 2000. The agency is taking this action to address concerns about the requirements raised by affected parties.

FDA believes that this further delay of the effective date of certain requirements in the PDMA final rule satisfies the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702). That memorandum requested Federal agencies to delay by 60 days the effective date of any regulation that was not effective as of January 20, 2001. The action taken in this document to further delay the effective date of certain requirements of PDMA exceeds 60 days. To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. As explained in the **SUPPLEMENTARY INFORMATION** section entitled "Need to Further Delay the Effective Date," the delay will give distributors additional time to exhaust inventories of drugs that do not have acceptable pedigrees to avoid economic harm. Additionally, the delay will allow more time for FDA to make recommendations to Congress, for Congress to evaluate those recommendations and, if necessary,

time for a regulatory or legislative change.

**DATES:** The effective date for §§ 203.3(u) and 203.50, and the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities, added at 64 FR 67720, December 3, 1999, is delayed until April 1, 2002.

**FOR FURTHER INFORMATION CONTACT:** Lee D. Korb, Center for Drug Evaluation and Research (HFD-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-2041.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Legislative and Regulatory Requirements for Distribution of Prescription Drugs by Unauthorized Distributors*

PDMA (Public Law 100-293) was enacted on April 22, 1988, and was modified by the PDA (Public Law 102-353, 106 Stat. 941) on August 26, 1992. The PDMA, as modified by the PDA, amended sections 301, 303, 503, and 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331, 333, 353, 381) to, among other things, establish requirements for the wholesale distribution of prescription drugs.

Section 503(e)(1)(A) of the act states that each person who is engaged in the wholesale distribution of a prescription drug who is not the manufacturer or an authorized distributor of record for the drug must, before each wholesale distribution of a drug, provide to the person receiving the drug a statement (in such form and containing such information as the Secretary may require) identifying each prior sale, purchase, or trade of the drug, including the date of the transaction and the names and addresses of all parties to the transaction.<sup>1</sup> Section 503(e)(4)(A) of the act states that, for the purposes of section 503(e), the term "authorized distributors of record" means those distributors with whom a manufacturer has established an "ongoing relationship" to distribute the manufacturer's products.

On December 3, 1999, the agency published final regulations in part 203 (21 CFR part 203) implementing these and other provisions of PDMA (64 FR 67720). Section 203.50 requires that, before the completion of any wholesale distribution of a prescription drug by a wholesale distributor that is not an authorized distributor of record to another wholesale distributor or retail pharmacy, the seller must provide to the

purchaser a statement identifying each prior sale, purchase, or trade of the drug. The identifying statement must include the proprietary and established name of the drug, its dosage, the container size, the number of containers, lot or control numbers of the drug being distributed, the business name and address of all parties to each prior transaction involving the drug, starting with the manufacturer, and the date of each previous transaction. Section 203.3(b) defines "authorized distributor of record" as a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's products. "Ongoing relationship" is defined in § 203.3(u) to mean an association that exists when a manufacturer and a distributor enter into a written agreement under which the distributor is authorized to distribute the manufacturer's products for a period of time or for a number of shipments. If the distributor is not authorized to distribute a manufacturer's entire product line, the agreement must identify the specific drug products that the distributor is authorized to distribute.

Thus, the final rule requires unauthorized distributors (i.e., those distributors who do not have a written authorization agreement) to provide a drug origin statement to purchasers showing the entire prior sales history of the drug back to the first sale by the manufacturer. As discussed in the preamble to the final rule (64 FR 67720 at 67747), manufacturers and authorized distributors of record are not required to provide an identifying statement when selling a drug, although the agency encouraged them to do so voluntarily to permit unauthorized distributors to continue to be able to purchase products from them.<sup>2</sup>

*B. Legislative and Regulatory Requirements Restricting Distribution of Blood Derived Prescription Drug Products by Health Care Entities*

Section 503(c)(3)(A) of the act states that no person may sell, purchase, or trade, or offer to sell, purchase, or trade any prescription drug that was purchased by a public or private hospital or other health care entity. Section 503(c)(3)(B) of the act states several exceptions to section

503(c)(3)(A), none of which are relevant to this discussion. Section 503(c)(3) of the act also states that "[f]or purposes of this paragraph, the term 'entity' does not include a wholesale distributor of drugs or a retail pharmacy licensed under State law."

Section 203.20 of the final rule provides, with certain exceptions, that no person may sell, purchase, or trade, or offer to sell, purchase, or trade any prescription drug that was purchased by a public or private hospital or other health care entity or donated or supplied at a reduced price to a charitable organization. In § 203.3(q) of the final rule, "Health care entity" is defined as meaning any person that provides diagnostic, medical, surgical, or dental treatment, or chronic or rehabilitative care, but does not include any retail pharmacy or wholesale distributor. Under both the act and the final rule, a person could not simultaneously be a health care entity and a retail pharmacy or wholesale distributor. Thus, under the final rule, blood centers functioning as health care entities could not engage in wholesale distribution of prescription drugs, except for blood and blood components intended for transfusion, which are exempt from the PDMA under § 203.1 of the final rule. Blood and blood components include whole blood, red blood cells, platelets, and cryoprecipitated antihemophilic factor, which are prepared by blood banks who collect blood from donors and separate out the components using physical or mechanical means. Blood derivatives are derived from human blood, plasma, or serum through a chemical fractionation manufacturing process. Examples of blood derivative products include albumin, antihemophilic factor, immune globulin, and alpha-1 anti-trypsin. As discussed in the preamble to the final rule in response to comments (64 FR 67720 at 67725 through 67727), blood derivative products are not blood or blood components intended for transfusion and therefore could not be distributed by health care entities, including full service blood centers that function as health care entities, after the final rule goes into effect.

*C. Events Leading to the Delay of the Effective Date*

After publication of the final rule, the agency received letters and petitions and had other communications with industry, industry trade associations, and members of Congress objecting to the provisions in §§ 203.3(u) and 203.50. On March 29, 2000, the agency met with representatives from the wholesale drug industry and industry

<sup>1</sup> The statement required under section 503(e)(1)(A) of the act is commonly referred to as a drug "pedigree."

<sup>2</sup> An unauthorized wholesale distributor that purchases a product from a manufacturer or authorized distributor of record without an identifying statement showing the prior sales of the drug could not provide an identifying statement to its purchasers and, therefore, could not conduct further wholesale transactions of the drug in compliance with § 203.50

associations to discuss their concerns. In addition, FDA received a petition for stay of action requesting that the relevant provisions of the final rule be stayed until October 1, 2001. The agency also received a petition for reconsideration from the Small Business Administration requesting that FDA reconsider the final rule and suspend its effective date based on the severe economic impact it would have on more than 4,000 small businesses.

In addition to the submissions on wholesale distribution by unauthorized distributors, the agency received several letters on, and held several meetings to discuss, the implications of the final regulations for blood centers that distribute blood derivative products and provide health care as a service to the hospitals and patients they serve. The blood center industry asserts that the regulations, and particularly the definition of "health care entity," will severely inhibit their ability to provide medical care and services to the detriment of client hospitals and the patients they serve, and may disrupt the distribution of blood derivatives to the public. The agency also received a letter from Congress on this issue.

Based on the concerns expressed by industry, industry associations, and Congress about implementing §§ 203.3(u) and 203.50 by the December 4, 2000, effective date, the agency published a document in the **Federal Register** of May 3, 2000 (65 FR 25639), delaying the effective date for those provisions until October 1, 2001. In addition, the May 2000 document delayed the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities until October 1, 2001. The May 2000 document also reopened the administrative record and gave interested persons until July 3, 2000, to submit written comments. As stated in the May 2000 document, the purpose of delaying the effective date for these provisions was to give the agency time to obtain more information about the possible consequences of implementing them and to further evaluate the issues involved.

#### *D. House Committee on Appropriations Reaction to Agency Delay and Committee's Report Request*

On May 16, 2000, the House Committee on Appropriations (the Committee) stated in its report accompanying the Agriculture, Rural Development, FDA, and Related Agencies Appropriations Bill, 2001 (H. Rept. 106-619) that it supported the "recent FDA action to delay the effective date for implementing certain

requirements of the Prescription Drug Marketing Act until October 1, 2001, and reopen the administrative record in order to receive additional comments." In addition, the Committee stated that it "believes the agency should thoroughly review the potential impact of the proposed provisions on the secondary wholesale pharmaceutical industry." The Committee directed the agency to provide a report to the Committee by January 15, 2001, summarizing the comments and issues raised and agency plans to address the concerns.

#### *E. Public Hearing*

After issuing the delay of the effective date for the relevant requirements of the final rule, the agency decided that it would be in the public interest to hold a public hearing to elicit comment on the requirements from interested persons. In the **Federal Register** of September 19, 2000 (65 FR 56480), the agency announced that a public hearing would be held on October 27, 2000, to discuss the requirements at issue (i.e., the requirements for unauthorized distributors and the provisions relating to distribution of blood derivatives by health care entities). The document set forth the purpose of the hearing and the procedure by which individuals could make a presentation at the hearing. In addition, the document set forth questions the agency wanted hearing participants and comments to address. The hearing was held on October 27, 2000, and comments were accepted until November 20, 2000.

#### **II. Need to Further Delay the Effective Date**

As discussed in section I of this document, the House Committee on Appropriations has directed the agency to provide a report to the Committee by January 15, 2001, summarizing the comments and issues raised and agency plans to address the concerns. The agency is currently considering the comments and testimony received and preparing its report to Congress. If the agency determines that some type of action is appropriate, this action could take the form of a change or modification to the final rule initiated by the agency or a legislative change initiated by Congress. Obviously, it would take a significant amount of time beyond January 15, 2001, to initiate and carry out either change. The agency believes that a legislative change to the act could take well into the 2001 calendar year.

In its hearing testimony and in a letter submitted on November 3, 2000, the Pharmaceutical Distributors

Association<sup>3</sup> noted that if the final rule were to apply to drugs already in distribution as of the effective date of the final rule, a significant number of these drugs would have to be taken out of distribution because of the absence of a proper pedigree. The association specifically stated that if the final rule as published were to go into effect October 1, 2001, distributors would need to stop buying drugs that do not have the required pedigree under the final rule and would have to begin to exhaust existing inventories of drugs that do not have acceptable pedigrees by the beginning of the year 2001 to avoid economic harm. The association specifically sought a decision by the agency that the final rule not apply to prescription drugs already in distribution as of the effective date so those drugs could be distributed.

FDA acknowledges the concerns of the Pharmaceutical Distributors Association and has decided that, in light of the uncertainty regarding how to resolve the issues involved and the possible adverse consequences that could result from implementation of the relevant provisions of the final rule, it is reasonable and appropriate to delay the effective date of §§ 203.3(u) and 203.50 for another 6 months until April 1, 2002. Additionally, the agency has decided to delay the applicability of § 203.3(q) to wholesale distribution of blood derivatives by health care entities until April 1, 2002. This delay will allow time for the agency to make its recommendations to Congress, for Congress to evaluate those recommendations, and, depending on the decisions of the agency and Congress, for a regulatory or legislative change to address the issues raised. Although a further delay of the effective date of the relevant provisions of the final rule is not the exact relief requested by the Pharmaceutical Distributors Association, the agency believes that it accomplishes the same purpose in that it will permit unauthorized distributors to operate for an additional 6 months without concern that the drugs in their inventory may become illegal to distribute and therefore valueless. All other provisions of the PDMA final rule became effective on December 4, 2000. This action should not be construed to indicate that FDA necessarily agrees with or has made decisions about the substantive arguments made in the petitions and other submissions related to implementation of §§ 203.3(u) and

<sup>3</sup>The Pharmaceutical Distributors Association is a trade association representing unauthorized wholesale prescription drug distributors.

203.50, or § 203.3(q), as it applies to wholesale distribution of blood derivatives by health care entities.

This action is being taken under FDA's authority under 21 CFR 10.35(a). The Commissioner of Food and Drugs finds that this further delay of the effective date is in the public interest.

Dated: February 22, 2001.

**Ann M. Witt,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 01-4964 Filed 2-28-01; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 1

[TD 8934]

RIN 1545-AX60

#### Reopenings of Treasury Securities and Other Debt Instruments; Original Issue Discount; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correction to final regulations.

**SUMMARY:** This document contains corrections to final regulations that were published in the **Federal Register** on Friday, January 12, 2001 (66 FR 2811), relating to reopenings of Treasury securities, other debt instruments, and original issue discount.

**DATES:** This correction is effective March 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** William E. Blanchard, (202) 622-3950 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final regulations (TD 8934) that are the subject of these corrections are under section 1275 of the Internal Revenue Code.

#### Need for Correction

As published the final regulations (TD 8934) contain errors that may prove to be misleading and are in need of clarification.

#### Correction of Publication

Accordingly, the publication of the final regulations (TD 8934), which were the subject of FR Doc. 01-622, is corrected as follows:

On page 2813, column 2, in the preamble under the heading "(2) Yield Test", second line from the bottom of the column the language "percent test in the proposed regulations" is corrected

to read "percent test in the proposed regulations".

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).*

[FR Doc. 01-4922 Filed 2-28-01; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 19 and 21

[T.D. ATF-442; Ref: Notice No. 832]

RIN 1512-AB60

#### Formulas for Denatured Alcohol and Rum (2000R-295P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

**ACTION:** Final Rule (Treasury decision).

**SUMMARY:** This final rule amends the regulations in 27 CFR Parts 19 and 21 by updating the information relating to the formulation of completely denatured alcohol (CDA), specially denatured alcohol (SDA), and specially denatured rum (SDR); the denaturants authorized for use in the manufacturing of these formulations; and the specifications for these denaturants. The updates include removing the proprietary brand name "BITREX" listed with the denaturant denatonium benzoate, incorporating an ATF ruling that approves the use of two substitute denaturants, and making other amendments to provide clarity.

**DATES:** This rule is effective on March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202-927-9347) or e-mail at [alctob@atfhq.atf.treas.gov](mailto:alctob@atfhq.atf.treas.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

27 CFR Part 21 contains listings of information relating to the formulation of CDA, SDA, and SDR, to the specifications for denaturants and to the denaturants authorized for use in the formulation of CDA, SDA, and SDR. ATF is authorized under § 5242 of the Internal Revenue Code of 1986 to prescribe the character and quantity of approved denaturing materials. Pursuant to § 21.91, ATF may authorize substitutions or variations from the specified list of denaturants upon

application filed with ATF by the denaturer. This final rule amends Part 21 by incorporating additional denaturants that have been approved pursuant to such applications. Additionally, this final rule incorporates several technical corrections.

#### Substitute Denaturants

ATF Ruling 94-4 approved the use of heptane as a substitute denaturant for toluene in SDA Formula No. 2-B (SDA 2-B) and alpha terpineol as a substitute denaturant in SDA Formula No. 38-B (SDA 38-B).

Heptane is currently approved as a substitute denaturant for rubber hydrocarbon solvent in SDA 28-A. This ruling allows for the use of heptane as a substitute, on an equal (1:1) basis, for any one of the denaturants (toluene, benzene or rubber hydrocarbon solvent) in SDA 2-B.

Alpha terpineol, having similar specifications to those of pine oil, N.F., an approved denaturant for SDA 38-B, is now approved for use as a substitute denaturant in SDA 38-B.

#### Removal of a Proprietary Name

This final rule removes the proprietary brand name "BITREX" each place it appears in parts 19 and 21. The use of the proprietary brand name "BITREX" in conjunction with the approved denaturant denatonium benzoate, N.F. may be mistakenly considered a product endorsement by ATF over all over proprietary names.

#### Other Changes

27 CFR 21.6 and 21.141 are amended to correctly cite referenced information.

#### Notice of Proposed Rulemaking

On July 31, 1996, ATF published a notice of proposed rulemaking (Notice No. 832, 61 FR 39929-39931) to solicit public comment on regulations to update the information provided in parts 19 and 21 relating to the formulation of CDA, SDA, and SDR; the denaturants authorized for use in the manufacturing of these formulations; and the specifications for these denaturants. The comment period closed on September 30, 1996.

#### Comments on the NPRM

ATF did not receive any comments in response to Notice 832, therefore, most of the amendments proposed in Notice No. 832 have been adopted in this final rule.

#### Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing

regulations, 5 CFR part 1320, do not apply to this final rule because there are no new reporting or recordkeeping requirements.

#### *Regulatory Flexibility Act*

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The regulations provide industry members with the most current listings of denaturants, denatured alcohol and rum formulations and their specifications. The regulations will not increase recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because this final rule will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration, for comment on its impact on small business. The Chief Counsel for Advocacy did not submit any comments.

#### *Executive Order 12866*

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

#### *Drafting Information*

The principal author of this document is Lisa M. Gesser, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

#### **List of Subjects**

##### *27 CFR Part 19*

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

##### *27 CFR Part 21*

Alcohol and alcoholic beverages, Authority delegation, Chemicals, Gasohol.

#### *Authority and Issuance*

Accordingly, ATF is amending chapter I of title 27 of the Code of Federal Regulations as follows:

### **PART 19—DISTILLED SPIRITS PLANTS**

**Paragraph 1.** The authority citation for Part 19 continues to read as follows:

**Authority:** 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

#### **§ 19.460 [Amended]**

**Par. 2.** Amend § 19.460(a) by removing the word “(BITREX)”.

#### **§ 19.1005 [Amended]**

**Par. 3.** Amend § 19.1005(c)(2) by removing the word “(Bitrex)”.

### **PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM**

**Par. 4.** The authority citation for Part 21 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 26 U.S.C. 5242, 7805.

#### **§ 21.32 [Amended]**

**Par. 5.** Amend § 21.32(a) by removing the word “(BITREX)”.

**Par. 6.** Revise § 21.33(a) to read as follows:

#### **§ 21.33 Formula No. 2–B**

(a) Formula. To every 100 gallons of alcohol add:

One-half gallon of benzene, ½ gallon of rubber hydrocarbon solvent, ½ gallon of toluene, or ½ gallon of heptane.

\* \* \* \* \*

#### **§ 21.65 [Amended]**

**Par. 7.** Amend § 21.65(a) by adding the words “Alpha terpineol” to the top of the list of substances.

#### **§ 21.76 [Amended]**

**Par. 8.** Amend § 21.76(a) by removing the word “(BITREX)”.

#### **§ 21.91 [Amended]**

**Par. 9.** Amend the second sentence of § 21.91 by removing the word “of” where it appears for the second time and adding the word “or” in its place.

#### **§§ 21.95 through 21.132 [Redesignated as §§ 21.96 through 21.133]**

**Par. 10.** Redesignate § 21.95 through § 21.132 as § 21.96 through § 21.133.

**Par. 11.** Add a new § 21.95 to read as follows:

#### **§ 21.95 Alpha terpineol.**

(a) Boiling point at 752mm 218.8–219.4°C.

(b) Density at 15° 0.9386.

(c) Refractive index at 20° 1.4831.

#### **§ 21.141 [Amended]**

**Par. 12.** Amend § 21.141 by adding “40–B” to the end of the list in the column entitled “Formulas authorized” for the entry “External pharmaceuticals, miscellaneous, U.S.P. or N.F.”, “Code No. 249.”

#### **§ 21.151 [Amended]**

**Par. 13.** Amend § 21.151 as follows:

a. Add the words “Alpha Terpineol \* \* \* S.D.A. 38–B” directly after the words “Almond oil, bitter, N.F.X. \* \* \* S.D.A. 38–B”;

b. Remove the word “(BITREX)” from the reference to “Denatonium benzoate, N.F. S.D.A. 1, 40–B”; and

c. Add “2–B” between “S.D.A.” and “28–A” across from “Heptane.”

Signed: January 4, 2001.

**Bradley A. Buckles,**

*Director.*

Approved: February 1, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary,*

*(Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 01–4845 Filed 2–28–01; 8:45 am]

**BILLING CODE 4810–31–M**

## **DEPARTMENT OF JUSTICE**

### **28 CFR Part 25**

**[AG Order No. 2403–2001; FBI 105F]**

**RIN 1110–AA02**

### **National Instant Criminal Background Check System Regulation; Delay of Effective Date**

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Final rule; delay of effective date.

**SUMMARY:** In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled “Regulatory Review Plan,” published in the **Federal Register** on January 24, 2001 (66 FR 7702), this action temporarily delays for 60 days the effective date of the final rule entitled “National Instant Criminal

Background Check System Regulation” published in the **Federal Register** on January 22, 2001, at 66 FR 6470. The temporary 60-day delay in effective date is necessary to give Department of Justice officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President’s memorandum of January 20, 2001.

**DATES:** The effective date of the final rule amending 28 CFR Part 25 published in the **Federal Register** on January 22, 2001, at 66 FR 6470, is delayed for 60 days, from March 5, 2001, until May 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Fanny Haslebacher, Attorney-Advisor, Federal Bureau of Investigation, Module A-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, (304) 625-2000.

**SUPPLEMENTARY INFORMATION:** To the extent that 5 U.S.C. section 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. section 553(b)(A). Alternatively, the Department of Justice’s implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. section 553(b)(B) and 553(d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The temporary 60-day delay in effective date is necessary to give Department of Justice officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President’s memorandum of January 20, 2001. Given the imminence of the effective date, seeking prior public comment on this temporary delay would have been impractical, as well as contrary to the public interest in the orderly promulgation and implementation of regulations. The imminence of the effective date is also good cause for making this action effective immediately upon publication.

Dated: February 23, 2001.

**John Ashcroft,**

*Attorney General.*

[FR Doc. 01-4979 Filed 2-28-01; 8:45 am]

**BILLING CODE 4410-06-M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

RIN 0720-AA53

#### Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Dental Program

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

**ACTION:** Final rule.

**SUMMARY:** On October 23, 2000 (65 FR 63202), the Department of Defense published a final rule on TRICARE Family Member Dental Plan. The rule had an effective date that began during the Presidential Moratorium on Rules, therefore, this rule is republished to change the effective date to April 1, 2001. This rule is published exactly as previously published. No changes have been made. It revises the comprehensive CHAMPUS regulation pertaining to the Expanded Active Duty Dependents Benefit Plan, or more commonly referred to as the TRICARE Family Member Dental Plan (TFMDP). The TFMDP limited eligibility to eligible dependents of active duty members (under a call or order that does not specify a period of thirty (30) day or less). Concurrent with the timeframe of the publication of the proposed rule, the Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65, sec. 711) was signed into law and its provisions have been incorporated into this final rule. The Act authorized a new plan, titled the TRICARE dental program (TDP), which allows the Secretary of Defense to offer a comprehensive premium based indemnity dental insurance coverage plan to eligible dependents of active duty members (under a call or order that does not specify a period of thirty (30) days or less), eligible dependents of members of the Selected Reserve and Individual Ready Reserve, and eligible members of the Selected Reserve and Individual Ready Reserve. The Act also struck section 1076b (Selected Reserve dental insurance), or Chapter 55 of title 10, United States Code, since the affected population and the authority for that particular dental insurance plan has been incorporated in 10 U.S.C. 1076a. Consistent with the proposed rule and the provisions of the Defense Authorization Act for Fiscal Year 2000, the final rule places the responsibility for TDP enrollment and a large portion of the appeals program on the dental plan contractor; allows the dental plan contractor to bill beneficiaries for plan premiums in certain circumstances; reduces the former TFMDP enrollment

period from twenty-four (24) to twelve (12) months; excludes Reserve component members ordered to active duty in support of a contingency operation from the mandatory twelve (12) month enrollment; clarifies dental plan requirements for different beneficiary populations; simplifies enrollment types and exceptions; reduces cost-shares for certain enlisted grades; adds anesthesia as a covered benefit; provides clarification on the Department’s use of the Congressional waiver for surviving dependents; incorporates legislative authority for calculating the method by which premiums may be raised and allowing premium reductions for certain enlisted grades; and reduces administrative burden by reducing redundant language, referencing language appearing in other CFR sections and removing language more appropriate to the actual contract. These improvements will provide Uniformed Service members and families with numerous quality of life benefits that will improve participation in the plan, significantly reduce enrollment errors and positively effect utilization of this important dental plan. The proposed rule was titled the “TRICARE Family Member Dental Plan”.

**DATES:** This rule is effective April 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Major Brian K. Witt, TRICARE Management Activity, 303-676-3496.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background and Legislative Changes**

The Basic Active Duty Dependents Dental Benefits Plan was implemented on August 1, 1987, allowing Uniformed Service personnel, on active duty for periods of greater than thirty (30) days, to voluntarily enroll their dependents in a basic dental health care plan. Under this plan, DoD shared the cost of the premium with the active duty service member. Although the plan was viewed as a major step in benefit enhancement for Uniformed Service families, there were still complaints that the enabling legislation was too restrictive in scope and that there should be expansion of services to better meet the dental needs of the Uniformed Service family.

Congress responded to these concerns by authorizing the Secretary of Defense to develop and implement an Expanded Active Duty Dependents Dental Benefit Plan (The Defense Authorization Act For Fiscal Year 1993, Pub. L. 102-484, sec. 701). The provisions of this Act specified the expanded benefit structure, as well as maximum monthly premiums for enrollees. Cost-sharing

levels for the expanded benefits were left up to the discretion of the Secretary of Defense after consultation with the other Administering Secretaries. The provisions of this Act were implemented on April 1, 1993.

Thereafter, Congress granted legislative authority to allow the Secretary of Defense to expand the dental plan outside the United States and to provide one (1) year of continued dental coverage for enrolled dependents of service members who die while on active duty (The Defense Authorization Act For Fiscal Year 1995, Pub. L. 103-337, sec. 703). In addition, the Congress granted subsequent legislative authority to allow the Secretary of Defense to waive or reduce the cost-shares in overseas locations (The Defense Authorization Act For Fiscal Year 1998, Pub. L. 105-85 sec. 732).

In Fiscal Year 1999, the Congress authorized a methodology by which the enrollee's share of the premium could be increased. This methodology is tied to the lesser of the percent increase in the basic pay of active duty servicemembers or the basic pay for statutory pay systems plus one-half percent. In authorizing language, the Secretary of Defense could apply this premium increase methodology as if it had been in place continuously since December 31, 1993. To allow for an expanded and more comprehensive benefit, the Department will apply this premium increase methodology as authorized. The language further instructed the Secretary of Defense to advise the Congress of any plans to reduce dental plan benefits and to wait one (1) year, after notification, before any benefits could be reduced (The Defense Authorization Act For Fiscal Year 1999, Pub. L. 105-261, sec. 701).

In Fiscal Year 2000, the Congress authorized the establishment of the TRICARE dental program (TDP), by striking 10 U.S.C. 1076a (Dependents' dental program) and 10 U.S.C. 1076b (Selected Reserve dental insurance) and inserting a revised section 1076a, TRICARE dental program (The Defense Authorization Act For Fiscal Year 2000, Pub. L. 106-65, sec. 711). Language in this revision directed the Secretary of Defense to establish a voluntary enrollment dental insurance plan for members of the Selected Reserve of the Ready Reserve (the former Selected Reserve dental insurance plan or more commonly referred to as the TRICARE Selected Reserve Dental Program or TSRDP) and for members of the Individual Ready Reserve described in 10 U.S.C. 10144(b). It also provided authorizing language to allow the Secretary of Defense to establish a

dental insurance plan for eligible dependents of Uniformed Service members who are on active duty for periods of greater than thirty (30) days (the former Dependents' dental plan or more commonly referred to as the TRICARE Family Member Dental Plan or TFMDP), members of the Individual Ready Reserve as described in 10 U.S.C. 10144(a), and eligible dependents of members of the Ready Reserve of the Reserve components who are not on active duty for more than thirty (30) days. Essentially, the authorizing language combined the eligible populations of the TFMDP and TSRDP and added, as eligibles, members of the Individual Ready Reserve and dependents of members of the Selected Reserve and Individual Ready Reserve. Additionally, the Congress directed that the insurance plans for the dependents of active duty members and for the members of the Selected Reserve and Individual Ready Reserve (as described in 10 U.S.C. 10144(b)) would be premium sharing plans between the enrollee and the Government. Beneficiaries eligible to enroll in the remaining insurance plans would be required to pay the full premium as a condition of enrollment. To allow for greater participation in the TDP, the Congress allowed the member's share of the premium to be paid from their basic or reserve pay accounts or, for those who do not receive such pay, through payment procedures as specified by the Department. The Congress also authorized waiver of dental plan requirements for surviving dependents of members of the Ready Reserve if the dependent was enrolled in the dental plan on the date of death of the member. This revised the previous waiver authority that applied only to enrolled surviving dependents of active duty members.

These legislative provisions have been codified in 10 U.S.C. 1076a, TRICARE dental program, and are reflected in the regulatory provisions of this final rule. By striking 10 U.S.C. 1076b, its implementing regulation, 32 CFR 199.21, TRICARE Selected Reserve Dental Program (TSRDP), is also removed and reserved.

## II. Programmatic Improvements

The below programmatic improvements will be effective once the follow-on TDP contract has been awarded and the performance period has begun. At the present time, the performance period is expected to begin on February 1, 2001.

### A. Expansion of Eligible Populations

With the authorizing legislation (The National Defense Authorization Act for Fiscal Year 2000), the final rule extends TDP coverage to newly eligible populations. This is an important step towards improving Reserve member's dental readiness and in promoting proper oral health across the beneficiary population. Designed to be a uniform benefit across all enrollees, the TDP offers a comprehensive benefit package with a strong focus on preventive and diagnostic services as well as pediatric and adolescent oral health. By extending coverage to the members of the Individual Ready Reserve and the dependents of the Selected Reserve and the Individual Ready Reserve and by offering a comprehensive dental benefit to the members of the Selected Reserve (versus the limited benefit previously available under the TSRDP), the Department and the Reserve components continue on the path towards parity with dental insurance plans historically extended only to dependents of the Active component. This final rule also addresses several administrative clarifications that distinguish dental plan requirements for the different beneficiary populations.

### B. Contractor Enrollment

Since the TFMDP (and its earlier versions) began, the Uniformed Services have administered the TFMDP dental plan enrollment, disenrollment and eligibility determination functions. The complexities of the dental plan, combined with a high turnover rate of relatively inexperienced Service personnel and other competing responsibilities, separate Service procedures, databases and data transfer processes, high cost and lengthy delays in software modifications, and Uniformed Service personnel downsizing, created the need for a centralized and uniform enrollment process. This can be best achieved by an experienced dental plan contractor and will allow service members to contact one (1) organization to enroll, disenroll, reenroll and discuss other TDP benefit and claims adjudication issues. By allowing the contractor to administer the enrollment function across all of the Uniformed Services, enrollment becomes portable whereas the current system supporting the TFMDP does not allow an active duty member from one (1) Service to enroll his or her family members through a separate Service. Contractor enrollment will also simplify the payroll deduction and eligibility determination process and reduce the possibility of waste and abuse at the

local level. In addition, it maintains a stable, trained work force at the front end of the TDP and greatly improves customer service.

An added benefit to contractor enrollment will be the elimination of the current required TFMDP Uniformed Service enrollment forms. The complex DD Form 2494, Active Duty Dependent Dental Plan Enrollment Form, and the DD Form 2494-1, Supplemental Active Duty Dependent Dental Plan Enrollment Form, will no longer be needed and will be replaced by a standard, simplified contractor enrollment form as well as telephonic and fax enrollment options.

Contractor enrollment has proven to be a success with the TRICARE Managed Care Support contractors as well as with contracted enrollment via the TSRDP and the TRICARE Retiree Dental Program (TRDP). The Uniformed Services will continue, as with the former dental plans and current TRICARE/CHAMPUS programs, to determine eligibility for the dental plan and process any changes regarding eligibility through the Defense Enrollment Eligibility Reporting System (DEERS).

#### C. Contractor Direct Billing

The current TFMDP is financed through premiums jointly paid by the Government and the active duty service member. The active duty service member's share of the premiums is deducted from their payroll accounts. In certain situations, otherwise eligible dependents are precluded from enrolling in the dental plan if their sponsor does not have an active payroll account or has insufficient funds in that account. These eligible dependents include dependents of incarcerated sponsors and survivors. By allowing the contractor to directly bill these dependents for their premium share, dependents previously excluded from enrollment can now receive coverage. With the authorizing legislation (The National Defense Authorization Act for Fiscal Year 2000), this improvement eliminates a previous enrollment termination provision in the regulation where eligibility for basic pay was a deciding criterion for continued enrollment in the dental plan. The provision of contractor direct billing is also extended to those Reserve component members and family members who are in similar situations.

#### D. Reduction in Mandatory Enrollment Period

A mandatory enrollment period is an essential factor behind Government and contractor actuarial estimates in developing the TDP premium and

provides a guarantee to the contracting community that they will collect a certain amount of premiums for the potential benefit payout. The final rule reduces the previous longstanding TFMDP twenty-four (24) month mandatory enrollment period to twelve (12) months under the TDP since this twenty-four (24) month period precluded numerous, otherwise eligible, active duty dependents from enrolling in the dental plan. These eligible dependents include newly eligible dependents of active duty members who are near the end of their active service, dependents of enlisted service members who are outside of their re-enlistment window of opportunity, and dependents of Reserve/Guard personnel called to active duty for less than twenty-four (24) months (such as Reserve/Guard personnel on active duty for training and special assignments). Reduction to a twelve (12) month enrollment period for the TDP has a precedent with other TRICARE plans, to include the TRICARE Managed Care Prime option and the TSRDP. By introducing this more liberal enrollment period, the regulation also calls for a twelve (12) month "lock-out" if the beneficiary disenrolls before completing the twelve (12) month enrollment period for any unauthorized reason or if the beneficiary fails to pay their premiums. A twelve (12) month lock-out period also applies to a Reserve component member who disenrolls before completing the special mandatory enrollment period for Reserve component members ordered to active duty in support of a contingency operation as provided in paragraph (c)(3)(ii)(C)(2) of this final rule. This "lock-out" period has a precedent with other commercial dental insurance plans as well as the TRICARE Managed Care Prime option, the TSRDP and the TRDP. "Lock-out" periods also discourage potential beneficiaries from enrolling in an insurance plan, receiving all of their benefit in a few months and then disenrolling without paying a full twelve (12) months' worth of premiums.

Beneficiaries enrolled in the TFMDP and TSRDP at the time when TDP coverage begins must complete their respective two (2) and one (1) year enrollment periods established under those superseded plans except if one of the conditions for valid disenrollment applies. Once these original enrollment periods are met, the beneficiary may continue TDP enrollment on month-to-month basis. A new one (1) year enrollment period will only be incurred if the beneficiary disenrolls and

attempts to reenroll in the TDP at a later date.

#### E. Enrollment Period for Certain Reserve Component Sponsors

The regulations provides that the twelve (12) month enrollment period shall not apply to eligible dependents of Reserve component sponsors ordered to active duty for more than thirty (30) days but less than twelve (12) months (other than for training) in support of a contingency operation as defined in 10 U.S.C. 101(a)(13). Orders may be issued under statutory authorities for recalling Reserve component members to active duty, but must specify that the member is serving in support of a specific contingency operation under the statutory definition. This desperate treatment for certain Reserve component members is necessary because of the involuntary nature of their call to active duty and statutory limitations on their period of active duty.

By contrast, active duty members are enlisted, reenlisted or commissioned for periods of active duty longer than one (1) year. The active duty member has the option to enroll eligible dependents at any time during that period of active duty prior to the last twelve (12) months of service, and at a relatively constant premium cost. Similarly, other Reserve component members generally volunteer for call to active duty and serve for at least one (1) year; therefore they will have the option to enroll family members at any time other than in the last twelve (12) months of that service.

However Reserve component members ordered to active duty in support of a contingency operation are normally limited by statute to a period of active duty of nine (9) months or less. While 38 U.S.C. Chapter 43 provides that a Reserve component member who has coverage under a civilian employer sponsored dental program may elect to continue that coverage during a period of active duty, for up to eighteen (18) months; if serving for more than thirty (30) days, the member may be required to pay the full premium cost with employer cost-sharing no longer required. Upon release from active duty, 38 U.S.C. Chapter 43, provides that the Reserve component member may be reinstated in his or her civilian employer sponsored program without a waiting period. Without an exception to the mandatory twelve (12) month enrollment period for TDP, members who cannot afford to pay the full premium for continuing their civilian plan would be unable to provide dental insurance coverage for their family members while on active duty. This

exclusion to the twelve (12) month enrollment period is therefore necessary to preclude such prejudicial treatment of Reserve component members ordered to active duty for less than twelve (12) months to support a contingency operation. In its place, a separate enrollment period is created for the Reserve component member as provided in paragraph (c)(3)(ii)(C)(2) if this final rule.

*F. Reduction in Cost-Shares for Certain Enlisted Pay Grades*

Although certain cost-shares are mandated by law, the Secretary of Defense has the prerogative to adjust cost-shares for certain types of dental procedures. Available data shows that our lower-paid enlisted families are reluctant to pursue specialized dental care because of the amount of their cost-

share. To allow greater participation and dental benefit utilization among our younger enlisted families, this regulation would have a two-tiered maximum cost-share dependent on the service member's pay grade. With the rates below, this reduction for enlisted service members does not have a measurable effect on the overall premium.

[In percent]

Covered services	Cost-share for pay grades E-1, E-2, E-3 and E-4	Cost-share for all other pay grades
Diagnostic.....	0	0
Preventive, except Sealants.....	0	0
Emergency Services.....	0	0
Sealants.....	20	20
Professional Consultations.....	20	20
Professional Visits.....	20	20
Post Surgical Services.....	20	20
Basic Restorative (example: amalgams, resins, stainless steel crowns).....	20	20
Endodontic.....	30	40
Periodontic.....	30	40
Oral and Maxillofacial Surgery.....	30	40
General Anesthesia.....	40	40
Intravenous Sedation.....	50	50
Other Restorative (example: crowns, onlays, casts).....	50	50
Prosthodontics.....	50	50
Medications.....	50	50
Orthodontic.....	50	50
Miscellaneous Services.....	50	50

A reduction in cost-shares has been chosen over a reduction in premium rates for enlisted service members in these pay grades because the premium rates have traditionally been affordable as compared to similar dental benefits programs administered by commercial dental insurance plans and given the fact that the Government pays sixty (60) percent of the total premium for dependents of active duty members and members of the Selected Reserve and the Individual Ready Reserve (as described in 10 U.S.C. 10144(b)). As such, the greatest effect on participation and utilization can best be achieved through a reduction in cost-shares.

*G. Simplification of Enrollment Options*

Under the final rule, previous TFMDP enrollment options have been simplified to assist the beneficiary, Government, provider of care and the dental plan contractor. Under the TFMDP (and previous plans), dependents were asked to choose from several different enrollment options depending on whether they had children under the age of four (4). With the advance in pediatric dentistry (pedodontics), dental care for children between the ages of one (1) and four (4) is highly recommended. As such, the dental plan

contractor will offer sponsors the opportunity to enroll these particular dependents when eligibility information indicates a dependent is one (1) year of age or older. Although there will continue to be two (2) separate premiums, a "single" premium for one (1) covered life, and a "family" premium for more than one (1) covered life, providing additional exceptions to this rule based on age will advance pediatric care among our beneficiary population, simplify enrollment processing by the dental plan contractor and promote greater understanding of enrollment options by all parties. A discussion of these enrollment policies and options will be found in the TDP contractor's benefit booklet.

*H. Addition of Anesthesia Services*

Local anesthesia, in conjunction with other covered dental procedures, is considered integral to the procedure itself and has been covered for several years. Other anesthesia services were historically excluded due to their high cost. The regulation allows the Department to add other types of anesthesia services to the TDP benefit package.

*I. Congressional Waiver for Surviving Dependents*

This final rule provides clarification on the Department's use of the Congressional waiver for surviving dependents. Since 1993, the Department has used the waiver authority to provide one (1) year of continued TFMDP enrollment at Government expense to eligible dependents of active duty members who die while on active duty for a period of thirty-one (31) days or more. To receive the continued enrollment at Government expense, the eligible dependents must have been enrolled in the TFMDP at the time of the active duty member's death. With the authority in the National Defense Authorization Act for Fiscal Year 2000, the final rule clarifies how the waiver will be used and extends use of the waiver to enrolled dependents of deceased members of the Selected Reserve and the Individual Ready Reserve (as described in 10 U.S.C. 10144(b)).

*J. Appeals Plan*

Under the TDP, the Department wishes to procure a responsive, simple, and two (or greater) tiered appeals program within the dental plan

contractor's operation. We have had similar success with this approach under the TSRDP and the TRDP, where the contractors administer the first two (2) levels of the appeals program, which are termed the initial determination and the reconsideration. Under the TDP, the appealing parties would appeal adverse decisions through the contractor's established appeal process where separate parties would perform the initial determination and reconsideration reviews (whether internal or external to the organization). The final levels of review would be, as before, to the Department, subscribing to guidelines under the Formal Review and Hearing procedures listed in 32 CFR 199.10.

#### K. Plan Transition

The programmatic improvements are scheduled to take effect when the follow-on TDP contract to the current TFMDP contract is awarded and the performance period begins. Operations under the current TSRDP contract will also cease at that time. Considering the magnitude of the planned improvements, the Department plans to "phase-out" operations under the former contractors and methods of operation to accommodate late claims processing and to allow the Uniformed Services time to process retroactive enrollment and coverage information to assist our beneficiaries. This "phase-out" schedule will be jointly determined between the Department and the outgoing and incoming dental plan contractors.

### III. Administrative Changes

The final rule incorporates several administrative changes. There is revised language on Federal preemption of State and local laws that conforms the dental regulation language to reflect the Department's previous exercise of statutory authority in this area. Other changes include: widespread publication of premium rates; allowing the Department to modify the benefit package based on developments in common dental care practices and standard dental insurance plans; permitting the dental plan contractor to pay "by report" procedures by providing an additional allowance to the primary covered procedure; removing detailed descriptions of types of authorized providers in favor of more general language; updating dental terminology to be consistent with the American Dental Association's Council on Dental Care Program's Code on Dental Procedures and Nomenclature; and, reorganizing and adding language

on the maximum amount payable by the TDP.

The final rule incorporates plan name and other changes to reflect current terminology, such as outdated references to the former TRICARE Management Activity address, "Active Duty Dependent Dental Plan", "TRICARE Family Member Dental Plan", "TRICARE Selected Reserve Dental Plan" and superceded regulations. It also reduces redundant language and reduces the overall size of the regulation through cross-references to applicable language appearing in other CFR sections. This includes references to appeals, fraud and abuse, eligibility, and adjunctive dental care as well as information on the former dental plans. Items that are more appropriate for inclusion in the actual contract statement of work have also been removed and transferred to that document. This includes equality of benefit processing, coordination of benefits, participating provider lists, Government review of billing practices, and how a Dental Explanation of Benefits should be structured. Finally, the regulation has been reorganized for better flow, ease of reading and understanding.

### IV. Public Comments

The proposed rule was published in the **Federal Register** on Wednesday, November 24, 1999, (64 FR 66126). We received one (1) comment letter. We thank the commenter and their organization; items raised by the commenter and our analysis of the comments are summarized below.

#### 1. Enrollment

The commenter recognized that there were numerous problems in the current enrollment and eligibility system that supports the TFMDP. They believe though that the Department should totally absorb any increased costs related to the contractor's enrollment function under the TDP.

*Response:* Under the law, 10 U.S.C. 1076a, the Congress authorized that the dental plans offered will be "premium sharing plans" and "full premium plans". As such, the Department must share in the cost of all programmatic improvements, to include contractor enrollment, for the majority of the enrollees.

#### 2. Enrollment

The commenter suggested that, if problems persist with enrollment and eligibility processing under the TDP and which cannot be swiftly handled by the dental contractor, consideration should be given to establishing some form of

beneficiary counselor that would act on behalf of the beneficiary.

*Response:* As with the current contracts, the Department is committed to assisting TDP beneficiaries if problems occur. Representatives from the Uniformed Services (to include Health Benefits Advisors), the Finance Centers, the Defense Manpower Data Center and the TRICARE Management Activity will all be available to act on our beneficiaries' behalf, if needed.

#### 3. Enrollment

The commenter asked if there are any provisions in the TDP to assist deployed service members with enrollment issues.

*Response:* Numerous options exist under the TDP to assist deployed service members. These include web-based and electronic mail capabilities, additional toll-free lines, extended hours of operation, and use of commercial business practices that allow representatives of the sponsor to act on enrollment issues during the sponsor's absence.

#### 4. Enrollment

The commenter requested that enrollees be offered the option to enroll their children who reach the age of four (4) stating that the increase in premium will result in more junior service members opting out of the plan.

*Response:* Under the current TFMDP, when a child reaches four (4) years old, they are automatically enrolled. This has not been a cause of concern with current enrollees nor has it led to measurable disenrollments. Continuing this in the TDP is in keeping with the accepted standards and direction of pediatric and adolescent dentistry, which recommends early preventive and diagnostic intervention and distinct care at set age intervals.

#### 5. Survivor Benefit

The commenter requested that the final rule contain specific language that the Government will pay premiums for enrolled survivors for the one (1) year period following the sponsor's death.

*Response:* We appreciate the comment and have clarified this in the final rule.

#### 6. Eligibility

The commenter questioned eligibility language regarding a child who becomes a re-eligible for TDP benefits because the child's marriage ends before the child is twenty-one (21) years of age and who loses eligibility at twenty-one (21) years of age. The commenter stated that this language was inconsistent with

eligibility up to age twenty-three (23) if the child is a full-time student.

*Response:* Full-time student eligibility for the TDP up to age twenty-three (23) is listed in the final rule by cross-reference to 32 CFR 199.3(b)(2)(iv)(C).

#### 7. Alternative Delivery Systems

The commenter was opposed to language regarding the provision of alternative delivery systems and potential implementation of these systems under the TDP. Their concern was that alternative delivery systems would limit beneficiaries to a dental health maintenance organization, preclude beneficiary choice of dental providers, allow such entities as Morale, Welfare and Recreation and Exchange organizations the opportunity for increased profits if they were designated as alternative delivery systems, and that both quality and cost could be compromised by the implementation of a closed system.

*Response:* The alternative delivery system language has been in this regulation since 1988. To date, this provision has not been utilized as the Department supports a traditional network-oriented dental indemnity insurance plan over other forms of managed care. The principle of provider choice is an important element of this regulation as well as the TDP contract and the Department has no immediate plans to engage in "closed" systems. The Department does reserve the right to explore alternative delivery systems in the form of demonstrations or pilot programs if the Congress believes this would be in the beneficiary's best interest.

#### V. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action" defined as one that would result in an annual effect on the economy of \$100 million or more, or have other substantial impacts. The Regulatory Flexibility Act (RFA) requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This final rule is not a significant regulatory action under Executive Order 12866. The changes set forth in this final rule are minor revisions to the existing regulation. Since this final rule does not impose information collection requirements, it does not need to be reviewed by the Executive Office of Management and Budget under

authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

#### List of Subjects in 32 CFR Part 199

Administrative practice and procedure, Claims, Dental health, Fraud, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

#### PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.13 is revised to read as follows:

#### § 199.13 TRICARE Dental Program.

(a) *General provisions*—(1) *Purpose.* This section prescribes guidelines and policies for the delivery and administration of the TRICARE Dental Program (TDP) of the Uniformed Services of the Army, the Navy, the Air Force, the Marine Corps, the Coast Guard, the Commissioned Corps of the U.S. Public Health Service (USPHS) and the National Oceanic and Atmospheric Administration (NOAA) Corps. The TDP is a premium based indemnity dental insurance coverage plan that is available to specified categories of individuals who are qualified for these benefits by virtue of their relationship to one of the seven (7) Uniformed Services and their voluntary decision to accept enrollment in the plan and cost share (when applicable) with the Government in the premium cost of the benefits. The TDP is authorized by 10 U.S.C. 1076a, TRICARE dental program, and this section was previously titled the "Active Duty Dependents Dental Plan". The TDP incorporates the former 10 U.S.C. 1076b, Selected Reserve dental insurance, and the section previously titled the "TRICARE Selected Reserve Dental Program", § 199.21.

(2) *Applicability.*—(i) *Geographic scope.* (A) The TDP is applicable geographically within the fifty (50) States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands. These areas are collectively referred to as the "CONUS (or Continental United States) service area".

(B) Extension of the TDP to areas outside the CONUS service area. In accordance with the authority cited in 10 U.S.C. 1076a(h), the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) may extend the TDP to areas other than those areas specified in paragraph (a)(2)(i)(A) of this section for

the eligible members and eligible dependents of members of the Uniformed Services. These areas are collectively referred to as the "OCONUS (or outside the Continental United States) service area". In extending the TDP outside the CONUS service area, the ASD(HA), or designee, is authorized to establish program elements, methods of administration and payment rates and procedures to providers that are different from those in effect for the CONUS service area to the extent the ASD(HA), or designee, determines necessary for the effective and efficient operation of the TDP. This includes provisions for preauthorization of care if the needed services are not available in a Uniformed Service overseas dental treatment facility and payment by the Department of certain cost-shares (or co-payments) and other portions of a provider's billed charges for certain beneficiary categories. Other differences may occur based on limitations in the availability and capabilities of the Uniformed Service overseas dental treatment facility and a particular nation's civilian sector providers in certain areas. These differences include varying licensure and certification requirements of OCONUS providers, Uniformed Service provider selection criteria and local results of provider selection, referral, beneficiary pre-authorization and marketing procedures, and care for beneficiaries residing in distant areas. The Director, Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) shall issue guidance, as necessary, to implement the provisions of paragraph (a)(2)(i)(B). Beneficiaries will be eligible for the same TDP benefits in the OCONUS service area although services may not be available or accessible in all OCONUS countries.

(ii) *Agency.* The provisions of this section apply throughout the Department of Defense (DoD), the United States Coast Guard, the USPHS and NOAA.

(iii) *Exclusion of benefit services performed in military dental care facilities.* Except for emergency treatment, dental care provided outside the United States, and services incidental to noncovered services, dependents of active duty, Selected Reserve and Individual Ready Reserve members enrolled in the TDP may not obtain those services that are benefits of the TDP in military dental care facilities, as long as those covered benefits are available for cost-sharing under the TDP. Enrolled dependents of active duty, Selected Reserve and Individual Ready Reserve members may continue to obtain noncovered services

from military dental care facilities subject to the provisions for space available care.

(3) *Authority and responsibility.*—(i) *Legislative authority.*—(A) *Joint regulations.* 10 U.S.C. 1076a authorized the Secretary of Defense, in consultation with the Secretary of Health and Human Services, and the Secretary of Transportation, to prescribe regulations for the administration of the TDP.

(B) *Administration.* 10 U.S.C. 1073 authorizes the Secretary of Defense to administer the TDP for the Army, Navy, Air Force, and Marine Corps under DoD jurisdiction, the Secretary of Transportation to administer the TDP for the Coast Guard, when the Coast Guard is not operating as a service in the Navy, and the Secretary of Health and Human Services to administer the TDP for the Commissioned Corps of the USPHS and the NOAA Corps.

(ii) *Organizational delegations and assignments.*—(A) *Assistant Secretary of Defense (Health Affairs) (ASD(HA)).* The Secretary of Defense, by 32 CFR part 367, delegated authority to the ASD(HA) to provide policy guidance, management control, and coordination as required for all DoD health and medical resources and functional areas including health benefit programs. Implementing authority is contained in 32 CFR part 367. For additional implementing authority see § 199.1. Any guidelines or policy necessary for implementation of this § 199.13 shall be issued by the Director, OCHAMPUS.

(B) *Evidence of eligibility.* DoD, through the Defense Enrollment Eligibility Reporting System (DEERS), is responsible for establishing and maintaining a listing of persons eligible to receive benefits under the TDP.

(4) *Preemption of State and local laws.* (i) Pursuant to 10 U.S.C. 1103 and section 8025 (fourth proviso) of the Department of Defense Appropriations Act, 1994, DoD has determined that, in the administration of 10 U.S.C. chapter 55, preemption of State and local laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods is necessary to achieve important Federal interests, including, but not limited to, the assurance of uniform national health programs for Uniformed Service beneficiaries and the operation of such programs at the lowest possible cost to DoD, that have a direct and substantial effect on the conduct of military affairs and national security policy of the United States. This determination is applicable to the dental services contracts that implement this section.

(ii) Based on the determination set forth in paragraph (a)(4)(i) of this

section, any State or local law relating to health or dental insurance, prepaid health or dental plans, or other health or dental care delivery or financing methods is preempted and does not apply in connection with the TDP contract. Any such law, or regulation pursuant to such law, is without any force or effect, and State or local governments have no legal authority to enforce them in relation to the TDP contract. (However, DoD may, by contract, establish legal obligations on the part of the dental plan contractor to conform with requirements similar or identical to requirements of State or local laws or regulations.)

(iii) The preemption of State and local laws set forth in paragraph (a)(4)(ii) of this section includes State and local laws imposing premium taxes on health or dental insurance carriers or underwriters or other plan managers, or similar taxes on such entities. Such laws are laws relating to health insurance, prepaid health plans, or other health care delivery or financing methods, within the meaning of the statutes identified in paragraph (a)(4)(i) of this section. Preemption, however, does not apply to taxes, fees, or other payments on net income or profit realized by such entities in the conduct of business relating to DoD health services contracts, if those taxes, fees, or other payments are applicable to a broad range of business activity. For purposes of assessing the effect of Federal preemption of State and local taxes and fees in connection with DoD health and dental services contracts, interpretations shall be consistent with those applicable to the Federal Employees Health Benefits Program under 5 U.S.C. 8909(f).

(5) *Plan funds.*—(i) *Funding sources.* The funds used by the TDP are appropriated funds furnished by the Congress through the annual appropriation acts for DoD, the Department of Health and Human Services and the Department of Transportation and funds collected by the Uniformed Services or contractor through payroll deductions or through direct billing as premium shares from beneficiaries.

(ii) *Disposition of funds.* TDP funds are paid by the Government (or in the case of direct billing, by the beneficiary) as premiums to an insurer, service, or prepaid dental care organization under a contract negotiated by the Director, OCHAMPUS, or a designee, under the provisions of the Federal Acquisition Regulation (FAR) (48 CFR chapter 1).

(iii) *Plan.* The Director, OCHAMPUS, or designee provides an insurance policy, service plan, or prepaid contract of benefits in accordance with those

prescribed by law and regulation; as interpreted and adjudicated in accord with the policy, service plan, or contract and a dental benefits brochure; and as prescribed by requirements of the dental plan contractor's contract with the Government.

(iv) *Contracting out.* The method of delivery of the TDP is through a competitively procured contract. The Director, OCHAMPUS, or a designee, is responsible for negotiating, under provisions of the FAR, a contract for dental benefits insurance or prepayment that includes responsibility for:

(A) Development, publication, and enforcement of benefit policy, exclusions, and limitations in compliance with the law, regulation, and the contract provisions;

(B) Adjudicating and processing claims; and conducting related supporting activities, such as enrollment, disenrollment, collection of premiums, eligibility verification, provider relations, and beneficiary communications.

(6) *Role of Health Benefits Advisor (HBA).* The HBA is appointed (generally by the commander of an Uniformed Services medical treatment facility) to serve as an advisor to patients and staff in matters involving the TDP. The HBA may assist beneficiaries in applying for benefits, in the preparation of claims, and in their relations with OCHAMPUS and the dental plan contractor. However, the HBA is not responsible for the TDP's policies and procedures and has no authority to make benefit determinations or obligate the TDP's funds. Advice given to beneficiaries by HBAs as to determination of benefits or level of payment is not binding on OCHAMPUS or the dental plan contractor.

(7) *Right to information.* As a condition precedent to the provision of benefits hereunder, the Director, OCHAMPUS, or designee, shall be entitled to receive information from an authorized provider or other person, institution, or organization (including a local, State, or United States Government agency) providing services or supplies to the beneficiary for which claims for benefits are submitted. While establishing enrollment and eligibility, benefits, and benefit utilization and performance reporting information standards, the Government has established and does maintain a system of records for dental information under the TDP. By contract, the Government audits the adequacy and accuracy of the dental plan contractor's system of records and requires access to information and records to meet plan accountabilities, to assist in contractor

surveillance and program integrity investigations and to audit OCONUS financial transactions where the Department has a financial stake. Such information and records may relate to attendance, testing, monitoring, examination, or diagnosis of dental disease or conditions; or treatment rendered; or services and supplies furnished to a beneficiary; and shall be necessary for the accurate and efficient administration and payment of benefits under this plan. To assist in claims adjudication, grievance and fraud investigations, and the appeals process, and before an interim or final determination can be made on a claim of benefits, a beneficiary or active duty, Selected Reserve or individual Ready Reserve member must provide particular additional information relevant to the requested determination, when necessary. Failure to provide the requested information may result in denial of the claim and inability to effectively investigate the grievance or fraud or process the appeal. The recipient of such information shall in every case hold such records confidential except when:

(i) Disclosure of such information is necessary to the determination by a provider or the dental plan contractor of beneficiary enrollment or eligibility for coverage of specific services;

(ii) Disclosure of such information is authorized specifically by the beneficiary;

(iii) Disclosure is necessary to permit authorized Government officials to investigate and prosecute criminal actions;

(iv) Disclosure constitutes a routine use of a routine use of a record which is compatible with the purpose for which it was collected. This includes a standard and acceptable business practice commonly used among dental insurers which is consistent with the principle of preserving confidentiality of personal information and detailed clinical data. For example, the release of utilization information for the purpose of determining eligibility for certain services, such as the number of dental prophylaxis procedures performed for a beneficiary, is authorized;

(v) Disclosure is pursuant to an order from a court of competent jurisdiction; or

(vi) Disclosure by the Director, OCHAMPUS, or designee, is for the purpose of determining the applicability of, and implementing the provisions of, other dental benefits coverage or entitlement.

(8) *Utilization review and quality assurance.* Claims submitted for benefits under the TDP are subject to review by

the Director, OCHAMPUS, or designee, for quality of care and appropriate utilization. The Director, OCHAMPUS, or designee, is responsible for appropriate utilization review and quality assurance standards, norms, and criteria consistent with the level of benefits.

(b) *Definitions.* For most definitions applicable to the provisions of this section, refer to Sec. 199.2. The following definitions apply only to this section:

(1) *Assignment of benefits.*

Acceptance by a nonparticipating provider of payment directly from the insurer while reserving the right to charge the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member for any remaining amount of the fees for services which exceeds the prevailing fee allowance of the insurer.

(2) *Authorized provider.* A dentist, dental hygienist, or certified and licensed anesthetist specifically authorized to provide benefits under the TDP in paragraph (f) of this section.

(3) *Beneficiary.* A dependent of an active duty, Selected Reserve or Individual Ready Reserve member, or a member of the Selected Reserve or Individual Ready Reserve, who has been enrolled in the TDP, and has been determined to be eligible for benefits, as set forth in paragraph (c) of this section.

(4) *Beneficiary liability.* The legal obligation of a beneficiary, his or her estate, or responsible family member to pay for the costs of dental care or treatment received. Specifically, for the purposes of services and supplies covered by the TDP, beneficiary liability includes cost-sharing amounts or any amount above the prevailing fee determination by the insurer where the provider selected by the beneficiary is not a participating provider or a provider within an approved alternative delivery system. In cases where a nonparticipating provider does not accept assignment of benefits, beneficiaries may have to pay the nonparticipating provider in full at the time of treatment and seek reimbursement directly from the insurer for all or a portion of the nonparticipating provider's fee. Beneficiary liability also includes any expenses for services and supplies not covered by the TDP, less any available discount provided as a part of the insurer's agreement with an approved alternative delivery system.

(5) *By report.* Dental procedures which are authorized as benefits only in unusual circumstances requiring justification of exceptional conditions related to otherwise authorized

procedures. These services are further defined in paragraph (e) of this section.

(6) *Contingency operation.* Defined in 10 U.S.C. 101(a)(13) as a military operation designated as a contingency operation by the Secretary of Defense or a military operation that results in the exercise of authorities for ordering Reserve Component members to active duty without their consent and is therefore automatically a contingency operation.

(7) *Cost-share.* The amount of money for which the beneficiary (or active duty, Selected Reserve or Individual Ready Reserve member) is responsible in connection with otherwise covered dental services (other than disallowed amounts) as set forth in paragraph (e) of this section. A cost-share may also be referred to as a "co-payment."

(8) *Defense Enrollment Eligibility Reporting System (DEERS).* The automated system that is composed of two (2) phases:

(i) Enrolling all active duty, Reserve and retired service members, their dependents, and the dependents of deceased service members; and

(ii) Verifying their eligibility for health care benefits in the direct care facilities and through the TDP.

(9) *Dental hygienist.* Practitioner in rendering complete oral prophylaxis services, applying medication, performing dental radiography, and providing dental education services with a certificate, associate degree, or bachelor's degree in the field, and licensed by an appropriate authority.

(10) *Dentist.* Doctor of Dental Medicine (D.M.D.) or Doctor of Dental Surgery (D.D.S.) who is licensed to practice dentistry by an appropriate authority.

(11) *Diagnostic services.* Category of dental services including:

(i) Clinical oral examinations;

(ii) Radiographic examinations; and

(iii) Diagnostic laboratory tests and examinations provided in connection with other dental procedures authorized as benefits of the TDP and further defined in paragraph (e) of the section.

(12) *Endodontics.* The etiology, prevention, diagnosis, and treatment of diseases and injuries affecting the dental pulp, tooth root, and periapical tissue as further defined in paragraph (e) of this section.

(13) *Initial determination.* A formal written decision on a TDP claim, a request for TDP benefit pre-determination, a request by a provider for approval as an authorized provider, or a decision suspending, excluding or terminating a provider as an authorized provider under the TDP. Rejection of a claim or pre-determination, or of a

request for benefit or provider authorization for failure to comply with administrative requirements, including failure to submit reasonably requested information, is not an initial determination. Responses to general or specific inquiries regarding TDP benefits are not initial determinations.

(14) *Nonparticipating provider.* A dentist or dental hygienist that furnished dental services to a TDP beneficiary, but who has not agreed to participate or to accept the insurer's fee allowances and applicable cost-share as the total charge for the services. A nonparticipating provider looks to the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member for final responsibility for payment of his or her charge, but may accept payment (assignment of benefits) directly from the insurer or assist the beneficiary in filing the claim for reimbursement by the dental plan contractor. Where the nonparticipating provider does not accept payment directly from the insurer, the insurer pays the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member, not the provider.

(15) *Oral and maxillofacial surgery.* Surgical procedures performed in the oral cavity as further defined in paragraph (e) of this section.

(16) *Orthodontics.* The supervision, guidance, and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex as further defined in paragraph (e) of this section.

(17) *Participating provider.* A dentist or dental hygienist who has agreed to accept the insurer's reasonable fee allowances or other fee arrangements as the total charge (even though less than the actual billed amount), including provision for payment to the provider by the beneficiary (or active duty, Selected Reserve or Individual Ready Reserve member) or any cost-share for covered services.

(18) *Party to the initial determination.* Includes the TDP, a beneficiary of the TDP and a participating provider of services whose interests have been adjudicated by the initial determination. In addition, provider who has been denied approval as an authorized TDP provider is a party to the initial determination, as is a provider who is suspended, excluded or terminated as an authorized provider, unless the

provider is excluded or suspended by another agency of the Federal Government, a state, or a local licensing authority.

(19) *Periodontics.* The examination, diagnosis, and treatment of diseases affecting the supporting structures of the teeth as further defined in paragraph (e) of this section.

(20) *Preventive services.* Traditional prophylaxis including scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth as further defined in paragraph (e) of this section.

(21) *Prostodontics.* The diagnosis, planning, making, insertion, adjustment, refinement, and repair of artificial devices intended for the replacement of missing teeth and associated tissues as further defined in paragraph (e) of this section.

(22) *Provider.* A dentist, dental hygienist, or certified and licensed anesthetist as specified in paragraph (f) of this section. This term, when used in relation to OCONUS service area providers, may include other recognized professions authorized to furnish care under laws of that particular country.

(23) *Restorative services.* Restoration of teeth including those procedures commonly described as amalgam restorations, resin restorations, pin retention, and stainless steel crowns for primary teeth as further defined in paragraph (e) of this section.

(24) *Sealants.* A material designed for application on specified teeth to seal the surface irregularities to prevent ingress of oral fluids, food, and debris in order to prevent tooth decay.

(c) *Eligibility and enrollment*—(1) *General.* 10 U.S.C. 1076a, 1072(2)(A), (D), or (I), 1072(6), 10143 and 10144 set forth those persons who are eligible for voluntary enrollment in the TDP. A determination that a person is eligible for voluntary enrollment does not automatically entitle that person to benefit payments. The person must be enrolled in accordance with the provisions set forth in this section and meet any additional eligibility requirements in this part in order for dental benefits to be extended.

(2) *Eligibility*—(i) *Persons eligible.* Eligibility for the TDP is continuous in situations where the sponsor or member changes status between any of these eligible categories and there is no break in service or transfer to a non-eligible status.

(A) A person who bears one of the following relationships to an active duty member (under a call or order that does not specify a period of thirty (30) days or less) or a member of the Selected Reserve (as specified in 10 U.S.C.

10143) or Individual Ready Reserve (as specified in 10 U.S.C. 10144):

(1) *Spouse.* A lawful husband or wife, regardless of whether or not dependent upon the active duty, Selected Reserve or Individual Ready Reserve member.

(2) *Child.* To be eligible, the child must be unmarried and meet the requirements set forth in §§ 199.3(b)(2)(iv)(A) and 199.3(b)(2)(iv)(C).

(B) A member of the Selected Reserve of the Ready Reserve (as specified in 10 U.S.C. 10143).

(C) A member of the Individual Ready Reserve of the Ready Reserve (as specified in 10 U.S.C. 10144(b)) who is subject to being ordered to active duty involuntarily in accordance with 10 U.S.C. 12304.

(D) All other members of the Individual Ready Reserve of the Ready Reserve (as specified in 10 U.S.C. 10144(a)).

(ii) *Determination of eligibility status and evidence of eligibility.*—(A) *Eligibility determination responsibility of the Uniformed Services.*

Determination of a person's eligibility for the TDP is the responsibility of the member's Uniformed Service. For the purpose of program integrity, the appropriate Uniformed Service shall, upon request of the Director, OCHAMPUS, or designee, review the eligibility of a specified person when there is reason to question the eligibility status. In such cases, a report on the result of the review and any action taken will be submitted to the Director, OCHAMPUS, or designee.

(B) *Procedures for determination of eligibility.* Uniformed Service identification cards do not distinguish eligibility for the TDP. Procedures for the determination of eligibility are identified in § 199.3(f)(2), except that Uniformed Service identification cards do not provide evidence of eligibility for the TDP. Although OCHAMPUS and the dental plan contractor must make determinations concerning a member or dependent's eligibility in order to ensure proper enrollment and proper disbursement of appropriated funds, ultimate responsibility for resolving a member or dependent's eligibility rests with the Uniformed Services.

(C) *Evidence of eligibility required.* Eligibility and enrollment in the TDP will be verified through the DEERS. Eligibility and enrollment information established and maintained in the DEERS file is the only acceptable evidence of TDP eligibility and enrollment. It is the responsibility of the active duty, Selected Reserve or Individual Ready Reserve member or TDP beneficiary, parent, or legal

representative, when appropriate, to provide adequate evidence for entry into the DEERS file to establish eligibility for the TDP, and to ensure that all changes in status that may affect eligibility are reported immediately to the appropriate Uniformed Service for action. Ineligibility for benefits is presumed in the absence of prescribed eligibility evidence in the DEERS file.

(3) *Enrollment.*—(i) *Previous plans.*—

(A) *Basic Active Duty Dependents Dental Benefit Plan.* The Basic Active Duty Dependents Dental Plan was effective from August 1, 1987, up to the date of implementation of the Expanded Active Duty Dependents Dental Benefit Plan. The Basic Active Duty Dependents Dental Benefit Plan terminated upon implementation of the expanded plan.

(B) *Expanded Active Duty Dependents Dental Benefit Plan.* The Expanded Active Duty Dependents Dental Benefit Plan (also known as the TRICARE Family Member Dental Plan) was effective from August 1, 1993, up to the date of implementation of the TDP. The Expanded Active Duty Dependents Dental Benefit Plan terminates upon implementation of the TDP.

(ii) *TRICARE Dental Program (TDP).*—

(A) *Election of coverage.* (1) Except as provided in paragraph (c)(3)(ii)(A)(2) of this section, active duty, Selected Reserve and Individual Ready Reserve service members may voluntarily elect to enroll their eligible dependents and members of the Selected Reserve and Individual Ready Reserve may voluntarily elect to enroll themselves following implementation of the TDP. In order to obtain TDP coverage, written or telephonic election by the active duty, Selected Reserve or Individual Ready Reserve member must be made and will be accomplished by submission or telephonic completion of an application to the dental plan contractor. This election can also be accomplished via electronic means.

(2) Eligible dependents of active duty members enrolled in the Expanded Active Duty Dependents Dental Benefit Plan at the time of implementation of the TDP will automatically be enrolled in the TDP. Eligible members of the Selected Reserve enrolled in the TRICARE Selected Reserve Dental Program at the time of implementation of the TDP will automatically be enrolled in the TDP. No election to enroll in the TDP will be required by the active duty or Selected Reserve member.

(B) *Premiums.*—(1) Enrollment will be by either single or family premium as defined as follows:

(i) *Single premium.* One (1) covered eligible dependent or one (1) covered

eligible Selected Reserve or Individual Ready Reserve member.

(ii) *Family premium.* Two (2) or more covered eligible dependents. Under the family premium, all eligible dependents of the active duty, Selected Reserve or Individual Ready Reserve member are enrolled.

(2) *Exceptions.* (i) An active duty, Selected Reserve or Individual Ready Reserve member may elect to enroll only those eligible dependents residing in one (1) location when the active duty, Selected Reserve or Individual Ready Reserve member has eligible dependents residing in two or more geographically separate locations (e.g., children living with a divorced spouse; a child attending college).

(ii) Instances where a dependent of an active duty member requires a hospital or special treatment environment (due to a medical, physical handicap, or mental condition) for dental care otherwise covered by the TDP, the dependent may be excluded from TDP enrollment and may continue to receive care from a military treatment facility.

(iii) A member of the Selected Reserve or Individual Ready Reserve may enroll separately from his or her eligible dependents. A member of the Selected Reserve or Individual Ready Reserve does not have to be enrolled in order for his or her eligible dependents to enroll under the TDP.

(C) *Enrollment period.*—(1) *General.* Enrollment of eligible dependents or members is for a period of one (1) year followed by month-to-month enrollment as long as the active duty, Selected Reserve or Individual Ready Reserve member chooses to continue enrollment. Active duty members may enroll their eligible dependents and eligible members of the Selected Reserve or Individual Ready Reserve may enroll themselves or their eligible dependents in the TDP provided there is an intent to remain on active duty or as a member of the Selected Reserve or Individual Ready Reserve (or any combination thereof without a break in service or transfer to a non-eligible status) for a period of not less than one (1) year by the service member and their parent Uniformed Service. Beneficiaries enrolled in the TDP must remain enrolled for a minimum period of one (1) year unless one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met.

(2) *Special enrollment period for Reserve component members ordered to active duty in support of contingency operations.* The mandatory twelve (12) month enrollment period does not apply to Reserve component members ordered to active duty (other than for training)

in support of a contingency operation as designated by the Secretary of Defense. Affected Reserve component members may enroll in the TDP only if their orders specify that they are ordered to active duty in support of a contingency operation, as defined by 10 U.S.C., for a period of thirty-one (31) days or more. An affected Reserve component member must elect to enroll in the TDP and complete the enrollment application within thirty (30) days following entry on active duty or within sixty (60) days following implementation of the TDP. Following enrollment, beneficiaries must remain enrolled, with the member paying premiums, until the end of the member's active duty period in support of the contingency operation or twelve (12) months, whichever occurs first unless one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met.

(3) *Continuation of enrollment from Expanded Active Duty Dependents Dental Benefit Plan.* Beneficiaries enrolled in the Expanded Active Duty Dependents Dental Benefit Plan at the time when TDP coverage begins must complete their two (2) year enrollment period established under this former plan except if one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met. Once this original two (2) year enrollment period is met, the active duty member may continue TDP enrollment on a month-to-month basis. A new one (1) year enrollment period will only be incurred if the active duty member disenrolls and attempts to reenroll in the TDP at a later date.

(4) *Continuation of enrollment from TRICARE Selected Reserve Dental Program.* Beneficiaries enrolled in the TRICARE Selected Reserve Dental Program at the time when TDP coverage begins must complete their one (1) year enrollment period established under this former program except if one of the conditions for disenrollment specified in paragraph (c)(3)(ii)(E) of this section is met. Once this original one (1) year enrollment period is met, the Selected Reserve member may continue TDP enrollment on a month-to-month basis. A new one (1) year enrollment period will only be incurred if the Selected Reserve member disenrolls and attempts to reenroll in the TDP at a later date.

(D) *Beginning dates of eligibility.* The beginning date of eligibility for TDP benefits is the first day of the month following the month in which the election of enrollment is completed, signed, and the enrollment and premium is received by the dental plan contractor, subject to a predetermined and publicized dental plan contractor

monthly cut-off date, except that the date of eligibility shall not be earlier than the first day of the month in which the TDP is implemented. This includes any changes between single and family member premium coverage and coverage of newly eligible or enrolled dependents or members.

(E) *Changes in and termination of enrollment.* (1) *Changes in status of active duty, Selected Reserve or Individual Ready Reserve member.* When the active duty, Selected Reserve or Individual Ready Reserve member is separated, discharged, retired, transferred to the Standby or Retired Reserve, his or her enrolled dependents and/or the enrolled Selected Reserve or Individual Ready Reserve member lose eligibility and enrollment as of 11:59 p.m. on the last day of the month in which the change in status takes place. When the Selected Reserve or Individual Ready Reserve member is ordered to active duty for a period of thirty-one (31) days or more without a break in service, the member loses their eligibility and is disenrolled, if they were previously enrolled; however, their enrolled dependents maintain their eligibility and previous enrollment subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract. When the previously enrolled active duty member is transferred back to the Selected Reserve or Individual Ready Reserve without a break in service, the member regains eligibility and is reenrolled; however, their enrolled dependents maintain their eligibility and previous enrollment subject to eligibility, enrollment and disenrollment provisions described in this section and in the TDP contract. Eligible dependents of an active duty, Selected Reserve or Individual Ready Reserve member serving a sentence of confinement in conjunction with a sentence of punitive discharge are still eligible for the TDP until such time as the active duty, Selected Reserve or Individual Ready Reserve member's discharge is executed.

(2) *Continuation of eligibility for dependents of service members who die while on active duty or while a member of the Selected Reserve or Individual Ready Reserve.* Eligible dependents of active duty members while on active duty for a period of thirty-one (31) days or more and eligible dependents of Selected Reserve or Individual Ready Reserve members, as specified in 10 U.S.C. 10143 and 10144(b) respectively, who die on or after the implementation date of the TDP, and whose dependents are enrolled in the TDP on the date of the death of the active duty, Selected

Reserve or Individual Ready Reserve member shall be eligible for continued enrollment in the TDP for up to one (1) year from the date of the active duty, Selected Reserve or Individual Ready Reserve member's death. This continued enrollment is not contingent on the Selected Reserve or Individual Ready Reserve member's own enrollment in the TDP. During the one (1) year period of continuous enrollment, the Government will pay both the Government and the beneficiary's portion of the premium share.

(3) *Changes in status of dependent.*—  
(i) *Divorce.* A spouse separated from an active duty, Selected Reserve or Individual Ready Reserve member by a final divorce decree loses all eligibility based on his or her former marital relationship as of 11:59 p.m. of the last day of the month in which the divorce becomes final. The eligibility of the active duty, Selected Reserve or Individual Ready Reserve member's own children (including adopted and eligible illegitimate children) is unaffected by the divorce. An unadopted stepchild, however, loses eligibility with the termination of the marriage, also as of 11:59 p.m. of the last day of the month in which the divorce becomes final.

(ii) *Annulment.* A spouse whose marriage to an active duty, Selected Reserve or Individual Ready Reserve member is dissolved by annulment loses eligibility as of 11:59 p.m. of the last day of the month in which the court grants the annulment order. The fact that the annulment legally declares the entire marriage void from its inception does not affect the termination date of eligibility. When there are children, the eligibility of the active duty, Selected Reserve or Individual Ready Reserve member's own children (including adopted and eligible illegitimate children) is unaffected by the annulment. An unadopted stepchild, however, loses eligibility with the annulment of the marriage, also as of 11:59 p.m. of the last day of the month in which the court grants the annulment order.

(iii) *Adoption.* A child of an active duty, Selected Reserve or Individual Ready Reserve member who is adopted by a person, other than a person whose dependents are eligible for TDP benefits while the active duty, Selected Reserve or Individual Ready Reserve member is living, thereby severing the legal relationship between the child and the active duty, Selected Reserve or Individual Ready Reserve member, loses eligibility as of 11:59 p.m. of the last day of the month in which the adoption becomes final.

(iv) *Marriage of child.* A child of an active duty, Selected Reserve or Individual Ready Reserve member who marries a person whose dependents are not eligible for the TDP, loses eligibility as of 11:59 p.m. on the last day of the month in which the marriage takes place. However, should the marriage be terminated by death, divorce, or annulment before the child is twenty-one (21) years old, the child again become eligible for enrollment as a dependent as of 12:00 a.m. of the first day of the month following the month in which the occurrence takes place that terminates the marriage and continues up to age twenty-one (21) if the child does not remarry before that time. If the marriage terminates after the child's 21st birthday, there is no reinstatement of eligibility.

(v) *Disabling illness or injury of child age 21 or 22 who has eligibility based on his or her student status.* A child twenty-one (21) or twenty-two (22) years old who is pursuing a full-time course of higher education and who, either during the school year or between semesters, suffers a disabling illness or injury with resultant inability to resume attendance at the institution remains eligible for the TDP for six (6) months after the disability is removed or until the student passes his or her 23rd birthday, whichever occurs first. However, if recovery occurs before the 23rd birthday and there is resumption of a full-time course of higher education, the TDP can be continued until the 23rd birthday. The normal vacation periods during an established school year do not change the eligibility status of a dependent child twenty-one (21) or twenty-two (22) years old in full-time student status. Unless an incapacitating condition existed before, and at the time of, a dependent child's 21st birthday, a dependent child twenty-one (21) or twenty-two (22) years old in student status does not have eligibility related to mental or physical incapacity as described in § 199.3(b)(2)(iv)(C)(2).

(4) *Other.*—(i) *Disenrollment because of no eligible beneficiaries.* When an active duty, Selected Reserve or Individual Ready Reserve member ceases to have any eligible beneficiaries, enrollment is terminated for those enrolled dependents.

(ii) *Option to disenroll as a result of a change in active duty station.* When an active duty member transfers with enrolled dependents to a duty station where space-available dental care for the enrolled dependents is readily available at the local Uniformed Service dental treatment facility, the active duty member may elect, within ninety (90) calendar days of the transfer, to

disenroll their dependents from the TDP. If the active duty member is later transferred to a duty station where dental care for the dependents is not available in the local Uniformed Service dental treatment facility, the active duty member may reenroll their eligible dependents in the TDP provided the member, as of the date of reenrollment, otherwise meets the requirements for enrollment, including the intent to remain on active duty for a period of not less than one (1) year. This disenrollment provision does not apply to enrolled dependents of members of the Selected Reserve or Individual Ready Reserve or to enrolled members of the Selected Reserve or Individual Ready Reserve.

(iii) *Option to disenroll due to transfer to OCONUS service area.* When an enrolled dependent of an active duty, Selected Reserve or Individual Ready Reserve member or an enrolled Selected Reserve or Individual Ready Reserve member relocates to locations within the OCONUS service area, the active duty, Selected Reserve or Individual Ready Reserve member may elect, within ninety (90) calendar days of the relocation, to disenroll their dependents from the TDP, or in the case of enrolled members of the Selected Reserve or Individual Ready Reserve, to disenroll themselves from the TDP. The active duty, Selected Reserve or Individual Ready Reserve member may reenroll their eligible dependents, or in the case of members of the Selected Reserve or Individual Ready Reserve, may reenroll themselves in the TDP provided the member, as of the date of reenrollment, otherwise meets the requirements for enrollment, including the intent to remain on active duty or as a member of the Selected Reserve or Individual Ready Reserve (or any combination thereof without a break in service or transfer to a non-eligible status) for a period of not less than one (1) year.

(iv) *Option to disenroll after an initial one (1) year enrollment.* When a dependent's enrollment under an active duty, Selected Reserve or Individual Ready Reserve member or a Selected Reserve or Individual Ready Reserve member's own enrollment has been in effect for a continuous period of one (1) year, the active duty, Selected Reserve or Individual Ready Reserve member may disenroll their dependents, or in the case of enrolled members of the Selected Reserve or Individual Ready Reserve may disenroll themselves at any time following procedures as set up by the dental plan contractor. Subsequent to the disenrollment, the active duty, Selected Reserve or Individual Ready Reserve member may reenroll their

eligible dependents, or in the case of members of the Selected Reserve or Individual Ready Reserve may reenroll themselves, for another minimum period of one (1) year. If, during any one (1) year enrollment period, the active duty, Selected Reserve or Individual Ready Reserve member disenrolls their dependents, or in the case of members of the Selected Reserve or Individual Ready Reserve disenrolls themselves, for reasons other than those listed in this paragraph (c)(3)(ii)(E) or fails to make premium payments, dependents enrolled under the active duty, Selected Reserve or Individual Ready Reserve member, or enrolled members of the Selected Reserve and Individual Ready Reserve, will be subject to a lock-out period of twelve (12) months. Following this period of time, active duty, Selected Reserve or Individual Ready Reserve members will be able to reenroll their eligible dependents, or members of the Selected Reserve or Individual Ready Reserve will be able to reenroll themselves, if they so choose. The twelve (12) month lock-out period applies to enrolled dependents of a Reserve component member who disenrolls for reasons other than those listed in this paragraph (c)(3)(ii)(E) or fails to make premium payments after the member has enrolled pursuant to paragraph (c)(3)(ii)(C) of this section.

(d) *Premium sharing—(1) General.* Active duty, Selected Reserve or Individual Ready Reserve members enrolling their eligible dependents, or members of the Selected Reserve or Individual Ready Reserve enrolling themselves, in the TDP shall be required to pay all or a portion of the premium cost depending on their status.

(i) *Members required to pay a portion of the premium cost.* This premium category includes active duty members (under a call or order to active duty that does not specify a period of thirty (30) days or less) on behalf of their enrolled dependents. It also includes members of the Selected Reserve (as specified in 10 U.S.C. 10143) and the Individual Ready Reserve (as specified in 10 U.S.C. 10144(b)) enrolled on their own behalf.

(ii) *Members required to pay the full premium cost.* This premium category includes members of the Selected Reserve (as specified in 10 U.S.C. 10143), and the Individual Ready Reserve (as specified in 10 U.S.C. 10144), on behalf of their enrolled dependents. It also includes members of the Individual Ready Reserve (as specified in 10 U.S.C. 10144(a)) enrolled on their own behalf.

(2) *Proportion of premium share.* The proportion of premium share to be paid by the active duty, Selected Reserve and

Individual Reserve member pursuant to paragraph (d)(1)(i) of this section is established by the ASD(HA), or designee, at not more than forty (40) percent of the total premium. The proportion of premium share to be paid by the Selected Reserve and Individual Reserve member pursuant to paragraph (d)(1)(ii) of this section is established by the ASD(HA), or designee, at one hundred (100) percent of the total premium.

(3) *Provision for increases in active duty, Selected Reserve and Individual Ready Reserve member's premium share.* (i) Although previously capped at \$20 per month, the law has been amended to authorize the cap on active duty, Selected Reserve and Individual Ready Reserve member's premiums pursuant to paragraph (d)(1)(i) of this section to rise, effective as of January 1 of each year, by the percent equal to the lesser of:

(A) The percent by which the rates of basic pay of members of the Uniformed Services are increased on such date; or

(B) The sum of one-half percent and the percent computed under 5 U.S.C. 5303(a) for the increase in rates of basic pay for statutory pay systems for pay periods beginning on or after such date.

(ii) Under the legislation authorizing an increase in the monthly premium cap, the methodology for determining the active duty, Selected Reserve and Individual Ready Reserve member's TDP premium pursuant to paragraph (d)(1)(i) of this section will be applied as if the methodology had been in continuous use since December 31, 1993.

(4) *Reduction of premium share for enlisted members.* For enlisted members in pay grades E-1 through E-4, the ASD(HA) or designee, may reduce the monthly premium these active duty, Selected Reserve and Individual Ready Reserve members pay pursuant to paragraph (d)(1)(i) of this section.

(5) *Reduction of cost-shares for enlisted members.* For enlisted members in pay grades E-1 through E-4, the ASD(HA) or designee, may reduce the cost-shares that active duty, Selected Reserve and Individual Ready Reserve members pay on behalf of their enrolled dependents and that members of the Selected Reserve and Individual Ready Reserve pay on their own behalf for selected benefits as specified in paragraph (e)(3)(i) of this section.

(6) *Premium payment method.* The active duty, Selected Reserve and Individual Ready Reserve member's premium share may be deducted from the active duty, Selected Reserve or Individual Ready Reserve member's basic pay or compensation paid under

37 U.S.C. 206, if sufficient pay is available. For members who are otherwise eligible for TDP benefits and who do not receive such pay and dependents who are otherwise eligible for TDP benefits and whose sponsors do not receive such pay, or if insufficient pay is available, the premium payment may be collected pursuant to procedures established by the Director, OCHAMPUS, or designee.

(7) *Annual notification of premium rates.* TDP premium rates will be determined as part of the competitive contracting process. Information on the premium rates will be widely distributed by the dental plan contractor and the Government.

(e) *Plan benefits—(1) General.—(i) Scope of benefits.* The TDP provides coverage for diagnostic and preventive services, sealants, restorative services, endodontics, periodontics, prosthodontics, orthodontics and oral and maxillofacial surgery.

(ii) *Authority to act for the plan.* The authority to make benefit determinations and authorize plan payments under the TDP rests primarily with the insurance, service plan, or prepayment dental plan contractor, subject to compliance with Federal law and regulation and Government contract provisions. The Director, OCHAMPUS, or designee, provides required benefit policy decisions resulting from changes in Federal law and regulation and appeal decisions. No other persons or agents (such as dentists or Uniformed Services HBAs) have such authority.

(iii) *Dental benefits brochure.—(A) Content.* The Director, OCHAMPUS, or designee, shall establish a comprehensive dental benefits brochure explaining the benefits of the plan in common lay terminology. The brochure shall include the limitations and exclusions and other benefit determination rules for administering the benefits in accordance with the law and this part. The brochure shall include the rules for adjudication and payment of claims, appealable issues, and appeal procedures in sufficient detail to serve as a common basis for interpretation and understanding of the rules by providers, beneficiaries, claims examiners, correspondence specialists, employees and representatives of other Government bodies, HBAs, and other interested parties. Any conflict, which may occur between the dental benefits brochure and law or regulation, shall be resolved in favor of law and regulation.

(B) *Distribution.* The dental benefits brochure will be available through the dental plan contractor and will be distributed with the assistance of the Uniformed Services HBAs and major

personnel centers at Uniformed Service installations and headquarters to all members enrolling themselves or their eligible dependents.

(iv) *Alternative course of treatment policy.* The Director, OCHAMPUS, or designee, may establish, in accordance with generally accepted dental benefit practices, an alternative course of treatment policy which provides reimbursement in instances where the dentist and beneficiary select a more expensive service, procedure, or course of treatment than is customarily provided. The alternative course of treatment policy must meet following conditions:

(A) The service, procedure, or course of treatment must be consistent with sound professional standards of dental practice for the dental condition concerned.

(B) The service, procedure, or course of treatment must be a generally accepted alternative for a service or procedure covered by the TDP for the dental condition.

(C) Payment for the alternative service or procedure may not exceed the lower of the prevailing limits for the alternative procedure, the prevailing limits or dental plan contractor's scheduled allowance for the otherwise authorized benefit procedure for which the alternative is substituted, or the actual charge for the alternative procedure.

(2) *Benefits.* The following benefits are defined (subject to the TDP's exclusions, limitations, and benefit determination rules approved by OCHAMPUS) using the American Dental Association's Council on Dental Care Program's Code on Dental Procedures and Nomenclature. The Director, OCHAMPUS, or designee, may modify these services, to the extent determined appropriate based on developments in common dental care practices and standard dental insurance programs.

(i) *Diagnostic and preventive services.* Benefits may be extended for those dental services described as oral examination, diagnostic, and preventive services defined as traditional prophylaxis (i.e., scaling deposits from teeth, polishing teeth, and topical application of fluoride to teeth) when performed directly by dentists and dental hygienists as authorized under paragraph (f) of this section. These include the following categories of service:

(A) Diagnostic services. (1) Clinical oral examinations.

(2) Radiographs and diagnostic imaging.

(3) Tests and laboratory examinations.

(B) Preventive services. (1) Dental prophylaxis.

(2) Topical fluoride treatment (office procedure).

(3) Other preventive services.

(4) Space maintenance (passive appliances).

(ii) *General services and services "by report".* The following categories of services are authorized when performed directly by dentists or dental hygienists, as authorized under paragraph (f) of this section, only in unusual circumstances requiring justification of exceptional conditions directly related to otherwise authorized procedures. Use of the procedures may not result in the fragmentation of services normally included in a single procedure. The dental plan contractor may recognize a "by report" condition by providing additional allowance to the primary covered procedure instead of recognizing or permitting a distinct billing for the "by report" service. These include the following categories of general services:

(A) Unclassified treatment.

(B) Anesthesia.

(C) Professional consultation.

(D) Professional visits.

(E) Drugs.

(F) Miscellaneous services.

(iii) *Restorative services.* Benefits may be extended for restorative services when performed directly by dentists or dental hygienists, or under orders and supervision by dentists, as authorized under paragraph (f) of this section. These include the following categories of restorative services:

(A) Amalgam restorations.

(B) Resin restorations.

(C) Inlay and onlay restorations.

(D) Crowns.

(E) Other restorative services.

(iv) *Endodontic services.* Benefits may be extended for those dental services involved in treatment of diseases and injuries affecting the dental pulp, tooth root, and periapical tissue when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of endodontic services:

(A) Pulp capping.

(B) Pulpotomy and pulpectomy.

(C) Endodontic therapy.

(D) Apexification and recalcification procedures.

(E) Apicoectomy and periradicular services.

(F) Other endodontic procedures.

(v) *Periodontic services.* Benefits may be extended for those dental services involved in prevention and treatment of diseases affecting the supporting structures of the teeth to include periodontal prophylaxis, gingivectomy

or gingivoplasty, gingival curettage, etc., when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of periodontic services:

- (A) Surgical services.
- (B) Periodontal services.
- (C) Other periodontal services.

(vi) *Prosthodontic services.* Benefits may be extended for those dental services involved in fabrication, insertion adjustment, relinement, and repair of artificial teeth and associated tissues to include removable complete and partial dentures, fixed crowns and bridges when performed directly by dentists as authorized under paragraph (f)(4) of this section. These include the following categories of prosthodontic services:

- (A) Prosthodontics (removable).
  - (1) Complete and partial dentures.
  - (2) Adjustments to dentures.
  - (3) Repairs to complete and partial dentures.
  - (4) Denture rebase procedures.
  - (5) Denture reline procedures.
  - (6) Other removable prosthetic services.

(B) Prosthodontics (fixed).

- (1) Fixed partial denture pontics.
- (2) Fixed partial denture retainers.
- (3) Other partial denture services.

(vii) *Orthodontic services.* Benefits may be extended for the supervision, guidance, and correction of growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations through the use of orthodontic procedures and devices when performed directly by dentists as authorized under paragraph (f) of this

section to include in-process orthodontics. These include the following categories of orthodontic services:

- (A) Limited orthodontic treatment.
- (B) Minor treatment to control harmful habits.
- (C) Interceptive orthodontic treatment.
- (D) Comprehensive orthodontic treatment.
- (E) Other orthodontic services.

(viii) *Oral and maxillofacial surgery services.* Benefits may be extended for basic surgical procedure of the extraction, reimplantation, stabilization and repositioning of teeth, alveoloplasties, incision and drainage of abscesses, suturing of wounds, biopsies, etc., when performed directly by dentists as authorized under paragraph (f) of this section. These include the following categories of oral and maxillofacial surgery services:

- (A) Extractions.
- (B) Surgical extractions.
- (C) Other surgical procedures.
- (D) Alveoloplasty—surgical preparation of ridge for denture.
- (E) Surgical incision.
- (F) Repair of traumatic wounds.
- (G) Complicated suturing.
- (H) Other repair procedures.
- (ix) Exclusion of adjunctive dental care. Adjunctive dental care benefits are excluded under the TDP. For further information on adjunctive dental care benefits under TRICARE/CHAMPUS, see § 199.4(e)(10).

(x) *Benefit limitations and exclusions.* The Director, OCHAMPUS, or designee, may establish such exclusions and limitations as are consistent with those established by dental insurance and

prepayment plans to control utilization and quality of care for the services and items covered by the TDP.

(xi) *Limitation on reduction of benefits.* If a reduction in benefits is planned, the Secretary of Defense, or designee, may not reduce TDP benefits without notifying the appropriate Congressional committees. If a reduction is approved, the Secretary of Defense, or designee, must wait one (1) year from the date of notice before a benefit reduction can be implemented.

(3) *Cost-shares, liability and maximum coverage.*—(i) *Cost-shares.* The following table lists maximum active duty, Selected Reserve and Individual Ready Reserve member and dependent cost-shares for covered services for participating and nonparticipating providers of care (see paragraph (f)(6) of this section for additional active duty, Selected Reserve and Individual Ready Reserve costs). These are percentages of the dental plan contractor's determined allowable amount that the active duty, Selected Reserve and Individual Ready Reserve member or beneficiary must pay to these providers. For care received in the OCONUS service area, the ASD(HA), or designee, may pay certain cost-shares and other portions of a provider's billed charge for enrolled dependents of active duty members (under a call or order that does not specify a period of thirty (30) days or less), and for members of the Selected Reserve (as specified in 10 U.S.C. 10143) and Individual Ready Reserve (as specified in 10 U.S.C. 10144(b)) enrolled on their own behalf.

[In percent]

Covered services	Cost-share for pay grades E-1, E-2, E-3 and E-4	Cost-share for all other pay grades
Diagnostic .....	0	0
Preventive, except Sealants .....	0	0
Emergency Services .....	0	0
Sealants .....	20	20
Professional Consultations .....	20	20
Professional Visits .....	20	20
Post Surgical Services .....	20	20
Basic Restorative (example: amalgams, resins, stainless steel crowns) .....	20	20
Endodontic .....	30	40
Periodontic .....	30	40
Oral and Maxillofacial Surgery .....	30	40
General Anesthesia .....	40	40
Intravenous Sedation .....	50	50
Other Restorative (example: crowns, onlays, casts) .....	50	50
Prosthodontics .....	50	50
Medications .....	50	50
Orthodontic .....	50	50
Miscellaneous .....	50	50

(ii) *Dental plan contractor liability.* When more than twenty-five (25) percent or more than two hundred (200) enrollees in a specific five (5) digit zip code area are unable to obtain a periodic or initial (non-emergency) dentistry appointment with a network provider within twenty-one (21) calendar days and within thirty-five (35) miles of the enrollee's place of residence, then the TRICARE Management Activity (TMA) will designate that area as "non-compliant with the access standard." Once so designated, the dental program contractor will reimburse the beneficiary, or active duty, Selected Reserve or Individual Ready Reserve member, or the nonparticipating provider selected by enrollees in that area (or a subset of the area or nearby zip codes in other five (5) digit zip code areas as determined by TMA) at the level of the provider's usual fees less the applicable enrollee cost-share, if any. TMA shall determine when such area becomes compliant with the access standards. This access standard and associated liability does not apply to care received in the OCONUS service area.

(iii) *Maximum coverage amounts.* Beneficiaries are subject to an annual maximum coverage amount for non-orthodontic dental benefits and a lifetime maximum coverage amount for orthodontics as established by the ASD (HA) or designee.

(f) *Authorized providers—(1) General.* Beneficiaries may seek covered services from any provider who is fully licensed and approved to provide dental care or covered anesthesia benefits in the state where the provider is located. This includes licensed dental hygienists, practicing within the scope of their licensure, subject to any restrictions a state licensure or legislative body imposes regarding their status as independent providers of care.

(2) *Authorized provider status does not guarantee payment of benefits.* The fact that a provider is "authorized" is not to be construed to mean that the TDP will automatically pay a claim for services or supplies provided by such a provider. The Director, OCHAMPUS, or designee, also must determine if the patient is an eligible beneficiary, whether the services or supplies billed are authorized and medically necessary, and whether any of the authorized exclusions of otherwise qualified providers presented in this section apply.

(3) *Utilization review and quality assurance.* Services and supplies furnished by providers of care shall be subject to utilization review and quality assurance standards, norms, and criteria

established under the TDP. Utilization review and quality assurance assessments shall be performed under the TDP consistent with the nature and level of benefits of the plan, and shall include analysis of the data and findings by the dental plan contractor from other dental accounts.

(4) *Provider required.* In order to be considered benefits, all services and supplies shall be rendered by, prescribed by, or furnished at the direction of, or on the order of a TDP authorized provider practicing within the scope of his or her license.

(5) *Participating provider.* An authorized provider may elect to participate for all TDP beneficiaries and accept the fee or charge determinations as established and made known to the provider by the dental plan contractor. The fee or charge determinations are binding upon the provider in accordance with the dental plan contractor's procedures for participation. The authorized provider may not participate on a claim-by-claim basis. The participating provider must agree to accept, within one (1) day of a request for appointment, beneficiaries in need of emergency palliative treatment. Payment to the participating provider is based on the lower of the actual charge or the dental plan contractor's determination of the allowable charge; however, payments to participating providers shall be in accordance with the methodology specified in paragraph (g)(2)(ii) of this section. Payment is made directly to the participating provider, and the participating provider may only charge the beneficiary the percent cost-share of the dental plan contractor's allowable charge for those benefit categories as specified in paragraph (e) of this section, in addition to the full charges for any services not authorized as benefits.

(6) *Nonparticipating provider.* An authorized provider may elect to not participate for all TDP beneficiaries and request the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member to pay any amount of the provider's billed charge in excess of the dental plan contractor's determination of allowable charges (to include the appropriate cost-share). Neither the Government nor the dental plan contractor shall have any responsibility for any amounts over the allowable charges as determined by the dental plan contractor, except where the dental plan contractor is unable to identify a participating provider of care within thirty-five (35) miles of the beneficiary's place of residence with appointment availability within twenty-one (21) calendar days. In such

instances of the nonavailability of a participating provider and in accordance with the provisions of the dental contract, the nonparticipating provider located within thirty-five (35) miles of the beneficiary's place of residence shall be paid his or her usual fees (either by the beneficiary or the dental plan contractor if the beneficiary elected assignment of benefits), less the percent cost-share as specified in paragraph (e)(3)(i) of this section.

(i) *Assignment of benefits.* A nonparticipating provider may accept assignment of benefits for claims (for beneficiaries certifying their willingness to make such assignment of benefits) by filing the claims completed with the assistance of the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member for direct payment by the dental plan contractor to the provider.

(ii) *No assignment of benefits.* A nonparticipating provider for all beneficiaries may request that the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member file the claim directly with the dental plan contractor, making arrangements with the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member for direct payment by the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member.

(7) *Alternative delivery system.—(i) General.* Alternative delivery systems may be established by the Director, OCHAMPUS, or designee, as authorized providers. Only dentists, dental hygienists and licensed anesthetists shall be authorized to provide or direct the provision of authorized services and supplies in an approved alternative delivery system.

(ii) *Defined.* An alternative delivery system may be any approved arrangement for a preferred provider organization, capitation plan, dental health maintenance or clinic organization, or other contracted arrangement which is approved by OCHAMPUS in accordance with requirements and guidelines.

(iii) *Elective or exclusive arrangement.* Alternative delivery systems may be established by contract or other arrangement on either an elective or exclusive basis for beneficiary selection of participating and authorized providers in accordance with contractual requirements and guidelines.

(iv) *Provider election of participation.* Otherwise authorized providers must be provided with the opportunity of applying for participation in an alternative delivery system and of

achieving participation status based on reasonable criteria for timeliness of application, quality of care, cost containment, geographic location, patient availability, and acceptance of reimbursement allowance.

(v) *Limitation on authorized providers.* Where exclusive alternative delivery systems are established, only providers participating in the alternative delivery system are authorized providers of care. In such instances, the TDP shall continue to pay beneficiary claims for services rendered by otherwise authorized providers in accordance with established rules for reimbursement of nonparticipating providers where the beneficiary has established a patient relationship with the nonparticipating provider prior to the TDP's proposal to subcontract with the alternative delivery system.

(vi) *Charge agreements.* Where the alternative delivery system employs a discounted fee-for-service reimbursement methodology or schedule of charges or rates which includes all or most dental services and procedures recognized by the American Dental Association's Council on Dental Care Program's Code on Dental Procedures and Nomenclature, the discounts or schedule of charges or rates for all dental services and procedures shall be extended by its participating providers to beneficiaries of the TDP as an incentive for beneficiary participation in the alternative delivery system.

(g) *Benefit payment*—(1) *General.* TDP benefits payments are made either directly to the provider or to the beneficiary or active duty, Selected Reserve or Individual Ready Reserve member, depending on the manner in which the claim is submitted or the terms of the subcontract of an alternative delivery system with the dental plan contractor.

(2) *Benefit payment.* Beneficiaries are not required to utilize participating providers. For beneficiaries who do use these participating providers, however, these providers shall not balance bill any amount in excess of the maximum payment allowed by the dental plan contractor for covered services. Beneficiaries using nonparticipating providers may be balance-billed amounts in excess of the dental plan contractor's determination of allowable charges. The following general requirements for the TDP benefit payment methodology shall be met, subject to modifications and exceptions approved by the Director, OCHAMPUS, or designee:

(i) Nonparticipating providers (or the Beneficiaries or active duty, Selected

Reserve or Individual Ready Reserve members for unassigned claims) shall be reimbursed at the equivalent of not less than the 50th percentile of prevailing charges made for similar services in the same locality (region) or state, or the provider's actual charge, whichever is lower, subject to the exception listed in paragraph (e)(3)(ii) of this section, less any cost-share amount due for authorized services.

(ii) Participating providers shall be reimbursed at the equivalent of a percentile of prevailing charges sufficiently above the 50th percentile of prevailing charges made for similar services in the same locality (region) or state as to constitute a significant financial incentive for participation, or the provider's actual charge, whichever is lower, less any cost-share amount due for authorized services.

(3) *Fraud, abuse, and conflict of interest.* The provisions of § 199.9 shall apply except for § 199.9(e). All references to "CHAMPUS contractors", "CHAMPUS beneficiaries" and "CHAMPUS providers" in § 199.9 shall be construed to mean the "dental plan contractor", "TDP beneficiaries" and "TPD providers" respectively for the purposes of this section. Examples of fraud include situations in which ineligible persons not enrolled in the TDP obtain care and file claims for benefits under the name and identification of a beneficiary; or when providers submit claims for services and supplies not rendered to Beneficiaries; or when a participating provider bills the beneficiary for amounts over the dental plan contractor's determination of allowable charges; or when a provider fails to collect the specified patient cost-share amount.

(h) *Appeal and hearing procedures.* The provisions of § 199.10 shall apply except where noted in this section. All references to "CHAMPUS contractors", "CHAMPUS beneficiaries", "CHAMPUS participating providers" and "CHAMPUS Explanation of Benefits" in § 199.10 shall be construed to mean the "dental plan contractor", "TDP beneficiaries", "TDP participating providers" and "Dental Explanation of Benefits or DEOB" respectively for the purposes of this section. References to "OCHAMPUSEUR" in § 199.10 are not applicable to the TDP or this section.

(1) *General.* See § 199.10(a).  
(i) *Initial determination.*—(A) *Notice of initial determination and right to appeal.* See § 199.10(a)(1)(i).

(B) *Effect of initial determination.* See § 199.10(a)(1)(ii).

(ii) *Participation in an appeal.* Participation in an appeal is limited to any party to the initial determination,

including OCHAMPUS, the dental plan contractor, and authorized representatives of the parties. Any party to the initial determination, except OCHAMPUS and the dental plan contractor, may appeal an adverse determination. The appealing party is the party who actually files the appeal.

(A) *Parties to the initial determination.* See §§ 199.10(a)(2)(i) and 199.10(a)(2)(i) (A), (B), (C) and (E). In addition, a third party other than the dental plan contractor, such as an insurance company, is not a party to the initial determination and is not entitled to appeal, even though it may have an indirect interest in the initial determination.

(B) *Representative.* See § 199.10(a)(2)(ii).

(iii) *Burden of proof.* See § 199.10(a)(3).

(iv) *Evidence in appeal and hearing cases.* See § 199.10(a)(4).

(v) *Late filing.* If a request for reconsideration, formal review, or hearing is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the dental plan contractor, or the Director, OCHAMPUS, or designee, that timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits. The decision of the Director, OCHAMPUS, or a designee, on the request for an exception to the filing requirement shall be final.

(vi) *Appealable issue.* See §§ 199.10(a)(6), 199.10(a)(6)(i), 199.10(a)(6)(iv), including §§ 199.10(a)(6)(iv) (A) and (C), and 199.10(a)(6)(v) for an explanation and examples of non-appealable issues. Other examples of issues that are not appealable under this section include:

(A) The amount of the dental plan contractor-determined allowable charge since the methodology constitutes a limitation on benefits under the provisions of this section.

(B) Certain other issues on the basis that the authority for the initial determination is not vested in OCHAMPUS. Such issues include but are not limited to the following examples:

(1) A determination of a person's enrollment in the TDP is the responsibility of the dental plan contractor and ultimate responsibility for resolving a beneficiary's enrollment rests with the dental plan contractor.

Accordingly, a disputed question of fact concerning a beneficiary's enrollment will not be considered an appealable issue under the provisions of this section, but shall be resolved in accordance with paragraph (c) of this section and the dental plan contractor's enrollment policies and procedures.

(2) Decisions relating to the issuance of a nonavailability statement (NAS) in each case are made by the Uniformed Services. Disputes over the need for an NAS or a refusal to issue an NAS are not appealable under this section. The one exception is when a dispute arises over whether the facts of the case demonstrate a dental emergency for which an NAS is not required. Denial of payment in this one situation is an appealable issue.

(3) Any decision or action on the part of the dental plan contractor to include a provider in their network or to designate a provider as participating is not appealable under this section. Similarly, any decision or action on the part of the dental plan contractor to exclude a provider from their network or to deny participating provider status is not appealable under this section.

(vii) *Amount in dispute.*—(A) *General.* An amount in dispute is required for an adverse determination to be appealed under the provisions of this section, except as set forth or further explained in § 199.10(a)(7)(ii), (iii) and (iv).

(B) *Calculated amount.* The amount in dispute is calculated as the amount of money the dental plan contractor would pay if the services involved in the dispute were determined to be authorized benefits of the TDP. Examples of amounts of money that are excluded by this section from payments for authorized benefits include, but are not limited to:

(1) Amounts in excess of the dental plan contractor's—determined allowable charge.

(2) The beneficiary's cost-share amounts.

(3) Amounts that the beneficiary, or parent, guardian, or other responsible person has no legal obligation to pay.

(4) Amounts excluded under the provisions of § 199.8 of this part.

(viii) *Levels of appeal.* See § 199.10(a)(8)(i). Initial determinations involving the sanctioning (exclusion, suspension, or termination) of TDP providers shall be appealed directly to the hearing level.

(ix) *Appeal decision.* See § 199.10(a)(9).

(2) *Reconsideration.* See § 199.10(b).

(3) *Formal review.* See § 199.10(c).

(4) *Hearing.*—(i) *General.* See §§ 199.10(d) and 199.10(d)(1) through

(d)(5) and (d)(7) through (d)(12) for information on the hearing process.

(ii) *Authority of the hearing officer.* The hearing officer, in exercising the authority to conduct a hearing under this part, will be bound by 10 U.S.C., chapter 55, and this part. The hearing officer in addressing substantive, appealable issues shall be bound by the dental benefits brochure applicable for the date(s) of service, policies, procedures, instructions and other guidelines issued by the ASD(HA), or a designee, or by the Director, OCHAMPUS, or a designee, in effect for the period in which the matter in dispute arose. A hearing officer may not establish or amend the dental benefits brochure, policy, procedures, instructions, or guidelines. However, the hearing officer may recommend reconsideration of the policy, procedures, instructions or guidelines by the ASD (HA), or a designee, when the final decision is issued in the case.

(5) *Final decision.* See §§ 199.10(e)(1) and 199.10(e)(1)(i) for information on final decisions in the appeal and hearing process, with the exception that no recommended decision shall be referred for review by ASD(HA).

#### § 199.21 [Removed and Reserved]

3. Section 199.21 is removed and reserved.

Dated: February 13, 2001.

L.M. Bynum,

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 01-4047 Filed 2-28-01; 8:45 am]

BILLING CODE 5001-10-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 60

[TN-2001-01; FRL-6941-7]

### New Stationary Sources; Supplemental Delegation of Authority to Knox County, TN

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

**ACTION:** Delegation of authority.

**SUMMARY:** The Knox County Department of Air Quality Management located in Knoxville, Tennessee has requested that EPA delegate authority for implementation and enforcement of existing New Source Performance Standards (NSPS) which have been previously adopted by the Knox County Department of Air Quality Management (KCDAQM or local agency) but have remained undelegated by EPA, and to

approve the mechanism for delegation (adopt-by-reference) of future NSPS. The purpose of the local agency request for approval of its delegation mechanism is to streamline existing administrative procedures by eliminating any unnecessary steps involved in the federal delegation process. With this NSPS delegation mechanism in place, a new or revised NSPS promulgated by EPA will become effective in Knox County on the date the NSPS is adopted if the local agency adopts the NSPS without change. No further local agency requests for delegation will be necessary. Likewise, no further **Federal Register** notices will be published. EPA reserves the right to implement the federal NSPS directly and continues to retain concurrent enforcement authority. The EPA's review of the local agency's pertinent laws, rules, and regulations indicate that adequate and effective procedures are in place for the implementation and enforcement of these Federal standards. This document was written to inform the public of delegations that were made to KCDAQM for which a **Federal Register** notice was not previously written and to inform the public of the local agency's new mechanism for delegation of future NSPS.

**EFFECTIVE DATE:** The effective date is March 1, 2001.

**ADDRESSES:** Copies of the request for delegation of authority and EPA's letter of delegation are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Knox County Department of Air Quality Management, City/County Building, Suite 459, 400 West Main Street, Knoxville, Tennessee 37902-2405.

Effective March 1, 2001, all requests, applications, reports and other correspondence required pursuant to the delegated standards should not be submitted to the Region 4 office, but should instead be submitted to the following address:

Knox County Department of Air Quality Management, City/County Building, Suite 459, 400 West Main Street, Knoxville, Tennessee 37902-2405.

**FOR FURTHER INFORMATION CONTACT:** Katy Forney, Air and Radiation Technology Branch, Environmental Protection Agency, Region 4, 61 Forsyth St. SW., Atlanta, Georgia 30303, 404-562-9130. E-mail: reeves.kathleen@epa.gov

**SUPPLEMENTARY INFORMATION:** Section 301, in conjunction with sections 110 and 111(c)(1) of the Clean Air Act as amended November 15, 1990, authorize EPA to delegate authority to implement and enforce the standards set out in 40 CFR part 60, New Source Performance Standards (NSPS).

On May 20, 1977, the EPA initially delegated the authority for implementation and enforcement of the NSPS program to Knox County. This agency has subsequently requested a delegation of authority for implementation and enforcement of the previously adopted, undelegated part 60 NSPS categories listed below as well as future NSPS categories codified in 40 CFR part 60.

Delegation Requested on May 8, 1997: 40 CFR part 60, Subpart VV, as amended 6-12-96  
40 CFR part 60, Subpart Dc, as amended 5-8-96

Delegation Requested on October 18, 1996:

40 CFR part 60, Subpart Ea, as amended 12-19-95  
40 CFR part 60, Subpart Eb, as amended 12-19-95  
40 CFR part 60, Subpart WWW, promulgated 3-12-96

All current NSPS categories are delegated with the exception of the following sections within those subparts that may not be delegated. Future NSPS regulations will contain a list of sections that will not be delegated for that subpart.

1. Subpart A—§ 60.8(b) (2) and (3), § 60.11(e) (7) and (8), § 60.13 (g), (i) and (j)(2).
2. Subpart B—§ 60.22, § 60.27, and § 60.29.
3. Subpart Da—§ 60.45a.
4. Subpart Db—§ 60.44b(f), § 60.44b(g), § 60.49b(a)(4).
5. Subpart Dc—§ 60.48c(a)(4).
6. Subpart Ec—§ 60.56(c)(i).
7. Subpart J—§ 60.105(a)(13)(iii), § 60.106(i)(12).
8. Subpart Ka—§ 60.114a.
9. Subpart Kb—§ 60.111b(f)(4), § 60.114b, § 60.116b(e)(3) (iii) and (iv), § 60.116b(f)(2)(iii).
10. Subpart O—§ 60.153(e).
11. Subpart EE—§ 60.316(d).
12. Subpart GG—§ 60.334(b)(2), § 60.335(f)(1).
13. Subpart RR—§ 60.446(c).
14. Subpart SS—§ 60.456(d).
15. Subpart TT—§ 60.466(d).
16. Subpart UU—§ 60.474(g).
17. Subpart VV—§ 60.482-1(c)(2) and § 60.484.
18. Subpart WW—§ 60.496(c).
19. Subpart XX—§ 60.502(e)(6).
20. Subpart AAA—§ 60.531, § 60.533, § 60.534, § 60.535, § 60.536(i)(2), § 60.537, § 60.538(e), § 60.539.

21. Subpart BBB—§ 60.543(c)(2)(ii)(B).
22. Subpart DDD—§ 60.562-2(c).
23. Subpart III—§ 60.613(e).
24. Subpart NNN—§ 60.663(e).
25. Subpart RRR—§ 60.703(e).
26. Subpart SSS—§ 60.711(a)(16), § 60.713(b)(1)(i), § 60.713(b)(1)(ii), § 60.713(b)(5)(i), § 60.713(d), § 60.715(a), § 60.716.
27. Subpart TTT—§ 60.723(b)(1), § 60.723(b)(2)(i)(C), § 60.723(b)(2)(iv), § 60.724(e), § 60.725(b).
28. Subpart VVV—§ 60.743(a)(3)(v)(A) and (B), § 60.743(e), § 60.745(a), § 60.746.
29. Subpart WWW—§ 60.754(a)(5).

After a thorough review of the request, the Regional Administrator determined that such a delegation was appropriate for all source categories. All sources subject to the requirements of 40 CFR part 60 will now be under the jurisdiction of the appropriate above mentioned agency.

Since review of the pertinent laws, rules, and regulations for the local agency has shown them to be adequate for implementation and enforcement of existing, previously adopted, undelegated NSPS and future NSPS, EPA hereby notifies the public that it has delegated the authority for existing, previously adopted and undelegated NSPS as well as the mechanism for delegation (adopt-by-reference) of future NSPS source categories upon publication of this **Federal Register** document.

#### Administrative Requirements

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

The Congressional Review Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the Congressional Review Act if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 1, 2001. EPA will submit a report containing this rule and other required

information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**Authority:** This document is issued under the authority of sections 101, 110, 111, 112 and 301 of the Clean Air Act, as Amended (42 U.S.C. 7401, 7410, 7411, 7412 and 7601).

Dated: January 16, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 01-4977 Filed 2-28-01; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 70 and 71

[FRL-6934-5]

RIN 2060-AJ04

### State and Federal Operating Permits Programs: Amendments Compliance Certification Requirements

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

**ACTION:** Direct final rule.

**SUMMARY:** We, the EPA, are taking direct final action to amend the State Operating Permits Program and the Federal Operating Permits Program. The amendments are in response to the United States Circuit Court of Appeals October 29, 1999, decision to remand to us part of the October 22, 1997, Compliance Assurance Monitoring rulemaking that included revisions describing the ongoing compliance certification content requirements. In particular, the Court ruled that the compliance certification must address whether the affected facility or source has been in continuous or intermittent compliance. This action will revise only certain sections to carry through the revisions to the compliance certification requirements.

**EFFECTIVE DATE:** This final rule amendment is effective on April 30, 2001 without further notice, unless we receive adverse comments on this direct final rule by April 2, 2001 or we receive a request for a hearing by March 16, 2001. If we receive timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing you, the public, that this direct final rule will not take effect.

**ADDRESSES:** *Comments.* You may submit comments on this rulemaking in writing

(original and two copies, if possible) to Docket No. A-91-52 to the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460.

**Docket.** A docket containing supporting information used in developing this direct final rule amendment is available for public inspection and copying at our docket office located at the above address in Room M-1500, Waerside Mall (ground floor). You are encouraged to phone in advance to review docket materials or schedule an appointment by phoning the Air Docket Office at (202) 260-7548. Refer to Docket No. A-91-52. The Docket Office may charge a reasonable fee for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Peter Westlin, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541-1058, e-mail: [westlin.peter@epa.gov](mailto:westlin.peter@epa.gov), facsimile 919/541-1039.

**SUPPLEMENTARY INFORMATION:** We are publishing these rule amendments without a prior proposal because we consider this to be noncontroversial amendment, given the Court's decision, and we do not expect to receive any adverse comment. We believe that this change to the previously promulgated rule adequately addresses the Court's direction expressed in the remand. In the event we receive adverse comment or a hearing request and this direct final rule is subsequently withdrawn, we are also publishing a separate document that will serve as the proposal of this amendment in the "Proposed Rules" section of this **Federal Register** publication. This final rule amendment will be effective on April 30, 2001 without further notice, unless we receive adverse comment on this rulemaking by April 2, 2001 or we receive a request for a hearing by March 11, 2001. If we receive timely adverse comment or a timely hearing request, we will publish a withdrawal in the **Federal Register** informing you that this direct final rule will not take effect. In that event, we will address all public comments in a subsequent final rule, based on the proposed rule amendment published in the "Proposed Rules" section of this **Federal Register** document. Because we will not provide further opportunity for public comment on this action, you must comment on this amendment at this time if you wish to do so.

**Regulated entities.** The requirements in this regulation may apply to you if you own or operate any facility subject

to the compliance certification requirements of part 70 to 71. These regulations apply to, but are not limited to, owners or operators of all sources who must have operating permits under either of these programs. State, local, and tribal governments are potentially affected to the extent that those governments must revise existing compliance certification requirements in implementing the part 70 operating permits program to make consistent with these revisions.

**Internet.** The text of this **Federal Register** document is also available on our web site on the Internet under the Recently Signed Rules category at the following address: <http://www.epa.gov/ttn/oarpg/rules.html> and the OAQPS, Emissions Measurement Center website at <http://www.epa.gov/ttn/emc/>. Our Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: <http://www.epa.gov/oar>.

**Electronic Access and Filing Addresses.** The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A-91-52 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this preamble. You may submit comments on this rulemaking electronically to the EPA's Air and Radiation Docket and Information Center at their address: [A-and-R-Docket@epa.gov](mailto:A-and-R-Docket@epa.gov). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. You must identify all comments and data in electronic form by the docket number (A-91-52). You should not submit CBI through electronic mail. You may file electronic comments online at any Federal Depository Library.

**Outline.** The information in this preamble is organized as follows:

- I. Authority
- II. Background
  - A. Regulatory and litigation background
  - B. Direction from Court

- III. Regulatory Revisions and Effects
  - A. What are the regulatory revisions?
  - B. What must I include in the compliance certification?
- IV. Administrative Requirements
  - A. Executive Order 12866: "Significant Regulatory Action Determination"
  - B. Regulatory Flexibility
  - C. Paperwork Reduction Act
  - D. Unfunded Mandates Reform Act
  - E. Docket
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  - H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - I. Submission to Congress and the General Accounting Office
  - J. National Technology Transfers and Advancement Act

## I. Authority

The statutory authority for this action is provided by sections 114 and 501 through 507 of the Clean Air Act, as amended (42 U.S.C. 7414a and 7661-7661f).

## II. Background

### A. Regulatory and Litigation Background

On October 22, 1997 (62 FR 54900), we published the final part 64, Compliance Assurance Monitoring (CAM) rule, and revisions to parts 70 and 71, the State and Federal Operating Permits Programs. Part 64 included procedures, design specifications, and performance criteria intended to satisfy, in part, the enhanced monitoring requirements of the Clean Air Act ("the Act"). The revisions to parts 70 and 71 included language to §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) specifying the minimum information necessary for the compliance certification required of responsible officials.

Subsequent to that publication, the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry) filed petitions with the United States Court of Appeals for the District of Columbia Circuit (Court) challenging several aspects of the CAM rule. Industry challenged our authority to promulgate the parts 70 and 71 language requiring that compliance certifications be based on any other material information including credible evidence.

The NRDC argued that the monitoring in part 64 failed to meet Clean Air Act requirements regarding enhanced monitoring and that the parts 70 and 71 revisions were inconsistent with the Act's explicit requirement that compliance certifications indicate

whether compliance is continuous or intermittent.

#### B. Direction From Court

On October 29, 1999, the Court issued its decision (see docket A-91-52, item VIII-A-1) *Natural Resources Defense Council v. EPA*, 194 F.3d 130 (D.C. Cir. 1999), on these challenges. Most importantly, the court held that "EPA's adoption of CAM as "enhanced monitoring" meets the requirements of the Clean Air Act." *Id.* at 137. The court also dismissed the industry's challenge as unripe relying on its earlier decision involving EPA's Credible Evidence Rule. *See Clean Air Implementation Project v. EPA*, 150 F.3d 1200 (D.C. Cir. 1998). The court did, however, agree with NRDC that EPA's removal from parts 70 and 71 of the explicit requirement that compliance certifications address whether compliance is continuous or intermittent revisions ran contrary to the statutory requirement that each source must certify "whether compliance is continuous or intermittent \* \* \*" *See* section 114(a)(3)(D), 42 U.S.C. 7414(a)(3)(D). Our rationale for revising the compliance certification language had been that so long as the compliance certification addressed the substance of whether compliance had been continuous or intermittent there was no need to require responsible officials to use the terms "continuous" or "intermittent." The court disagreed finding Congress' intent to be "express and unambiguous." 194 F.3d at 138. Accordingly, the court remanded that portion of the CAM rule "pertaining to 'continuous or intermittent' compliance certification" to us for revision consistent with the court's decision.

### III. Regulatory Revisions and Effects

#### A. What Are the Regulatory Revisions?

In response to the court's remand, we have added text to sections, §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B), to require that the responsible official for the affected facility include in the annual (or more frequent) compliance certification whether compliance during the period was continuous or intermittent. Specifically, the revised text, including the introductory language for both sections reads: "Permits shall include each of the following \* \* \*: A requirement that the compliance certification include all of the following \* \* \*: The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period

was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section." The italicized text indicates the revisions made in response to the Court decision. Other text within both of these sections remains as promulgated in 1997. Under this revised language, the responsible official must include in the compliance certification a statement as to whether compliance during the period was continuous or intermittent. We believe these revisions respond directly and adequately to the Court's decision to remand the compliance certification requirements to us and are consistent with the requirements of the Act.

The Court's decision and this amendment to our regulations also necessitate a change to a guidance document issued in connection with the CAM rulemaking. In "Compliance Assurance Monitoring Rule Implementation Questions and Responses" (from Steve Hitte, OPG-ITPID to APMs, Regions I-X (January 8, 1998)), we advised permitting authorities that they could require sources to certify compliance using either existing state regulations that tracked the statute (e.g., certify to whether compliance was continuous or intermittent) or the certification language in the CAM revisions to Part 70. *See* at Question 10. This guidance was based on our interpretation that (1) the statutory requirement to certify whether compliance is continuous or intermittent had sufficient flexibility to allow the approach taken in the revisions to Part 70 and (2) the state regulations on compliance certification generally tracked exactly the statutory language on certification of continuous or intermittent compliance. The Court, however, disagreed with our interpretation of the statutory language and remanded the revisions to Part 70 to us. As a result, the guidance above is no longer justified. Accordingly, we withdraw the guidance provided to permitting authorities in Question and Response 10 in the above-mentioned guidance to the extent it states that permitting authorities may allow certifications based on the Part 70 revisions set aside by the Court. We are aware that most if not all approved state program regulations continue to require responsible officials to certify whether compliance was intermittent or continuous. Accordingly, any state programs that followed the interpretation in Question 10 above should be able to expeditiously require

certifications to be based upon the proper statutory certification language.

#### B. What Must I Include in the Compliance Certification?

The compliance certification is your assessment, signed by your facility's responsible official, as to whether your facility complied with the terms and conditions of the permit. The compliance certification includes three main elements. The first is identification of all the permit terms and conditions to which your facility is subject. These include applicable design provisions, work practice elements, required operating conditions, and emissions limitations in addition to general and specific monitoring, reporting, and record keeping requirements.

Second, you must identify the method(s) and any other material information used to determine compliance status of each term and condition. The method(s) includes at a minimum any testing and monitoring methods required by Parts 70 or 71 that were conducted during the period for the certification. You must describe whether the data collection using the methods referenced for the compliance certification provide continuous or intermittent data.

Third, you must certify as to the status of compliance including whether compliance was continuous or intermittent. You must base this status on the results of the identified methods and other material information. You must note as possible exceptions to compliance any deviations from the permit requirements and any excursions, or exceedances as defined in part 64, or other underlying applicable requirements, during which compliance is required.

You can find additional explanation on our interpretation of a certification of continuous or intermittent compliance in the preamble to the final CAM rule. 62 FR 54937

### IV. Administrative Requirements

#### A. Executive Order 12866: "Significant Regulatory Action Determination"

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the

economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this final rule amendment would be significantly less than \$100 million and would not meet any of the other criteria specified in the Executive Order, we have determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review. Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of this amendment, we consider 30 days to be sufficient in providing a meaningful public comment period for this rulemaking.

### B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) requires us to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We determined that these amendments to the parts 70 and 71 do not have a significant impact on a substantial number of small entities. We intended that compliance with the CAM rule would provide monitoring information sufficient to demonstrate whether compliance was continuous or intermittent. Even though we did not require that the responsible official use those terms in the revisions to the compliance certification, we did require that the responsible rely on the monitoring information in making that certification. That the court held that the responsible official must address explicitly whether compliance was continuous or intermittent does not substantively change the monitoring responsibilities or economic impact. The revisions to parts 70 and 71 in this

action add no burden on responsible officials other than to categorize their compliance status as continuous or intermittent. We have determined that a regulatory flexibility analysis is not necessary in connection with this action.

### C. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore we will submit no information collection request (ICR) to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. That plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this amendment is of very narrow scope, and provides a

compliance alternative very similar to one already available in the promulgated part 70 compliance certification requirements. We have determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. We have also determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

### E. Docket

The docket includes an organized and complete file of all the information upon which we relied in taking this direct final action. The docketing system is intended to allow you to identify and locate documents readily so that you can participate effectively in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

### F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. The rule will

not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 applies to any rule that the EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These amendments to the State and Federal operating permits program are not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined by E.O. 12866, and the amendments do not address an environmental health or safety risk that would have a disproportionate effect on children.

*H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns,

and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." These amendments to parts 70 and 71 do not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

*I. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 et seq., added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**.

*J. National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (March 7, 1996), we are required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where we do not use available and potentially applicable voluntary consensus standards, the NTTA requires us to provide Congress, through OMB, an explanation of the reasons for not using such standards. This action does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Parts 70 and 71**

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 12, 2001.

**Carol M. Browner,**  
*Administrator.*

For the reasons stated in the preamble, we amend title 40, chapter I, parts 70 and 71 of the Code of Federal Regulations to read as follows:

**PART 70—STATE OPERATING PERMIT PROGRAMS**

1. The authority citation for part 70 continues to read as follows:

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

2. Section 70.6 is amended by revising paragraph (c)(5)(iii)(C) to read as follows:

**§ 70.6 Permit content.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification. The certification shall also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under part 64 of this chapter occurred; and

\* \* \* \* \*

**PART 71—FEDERAL OPERATING PERMITS PROGRAMS**

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

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

2. Section 71.6 is amended by revising paragraph (c)(5)(iii)(C) to read as follows:

**§ 71.6 Permit content.**

\* \* \* \* \*

(c) \* \* \*

(5) \* \* \*

(iii) \* \* \*

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or

intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section. The certification shall identify each deviation and take it into account in the compliance certification; and

\* \* \* \* \*

[FR Doc. 01-4975 Filed 2-28-01; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 94-129; FCC 00-255 and FCC 01-67]

#### Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Commission adopts rules proposed in the Second Report and Order and Further Notice of Proposed Rulemaking to implement the slamming provisions of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Telecommunications carriers are prohibited from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as "slamming," enables those companies who engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. The rules adopted in this document will improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams.

**DATES:** Effective April 2, 2001 except for §§ 64.1130(a) through (c), 64.1130(i), 64.1130(j), 64.1180, 64.1190(d)(2), 64.1190(d)(3), 64.1190(e), and 64.1195, which contain information collection requirements that have not yet been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

**FOR FURTHER INFORMATION CONTACT:** Dana Walton-Bradford, Attorney,

Accounting Policy Division, Common Carrier Bureau, (202) 418-7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Third Report and Order and Second Order on Reconsideration (*Third Report and Order*) in CC Docket No. 94-129, which was released on August 15, 2000. This summary also contains amendments and modifications to the *Third Report and Order* that were adopted in an Order released on February 22, 2001. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

#### I. Introduction and Background

1. In this Third Report and Order and Second Order on Reconsideration (Order), we adopt rules proposed in the Second Report and Order and Further Notice of Proposed Rulemaking (*Section 258 Order* or *FNPRM*, 64 FR 07745 (2/16/1999)) to implement Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act). Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as "slamming," enables those companies who engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. The rules we adopt in this Order will improve the carrier change process for consumers and carriers alike, while making it more difficult for unscrupulous carriers to perpetrate slams.

2. In the *Section 258 Order*, we established a comprehensive framework designed to close loopholes used by carriers who slam consumers and to bolster certain aspects of our slamming rules to increase their deterrent effect. In particular, we adopted aggressive new liability rules designed to take the profit out of slamming. We also broadened the scope of our slamming rules to encompass all carriers and imposed more rigorous verification measures. In our *First Reconsideration Order*, we amended certain aspects of the slamming liability rules, granting in part petitions for reconsideration of our *Section 258 Order*. Although the petitions raised a broad range of issues relating to the slamming rules, the *First Reconsideration Order* addressed only those issues relating to our liability rules, which had been stayed by the

D.C. Circuit. We chose to resolve those issues separately, and on an expedited basis, because of the overriding public interest in reinstating the liability rules in order to deter slamming.

3. When the Commission released the *Section 258 Order*, it recognized that additional revisions to the slamming rules could further improve the preferred carrier change process and prevent unauthorized changes. Thus, concurrent with the release of the *Section 258 Order*, the Commission issued a Further Notice of Proposed Rulemaking and sought comment on the following proposals: (1) Permitting the authorization and verification of preferred carrier changes over the Internet; (2) requiring resellers to obtain their own carrier identification codes (CICs), or, in the alternative, some type of pseudo-CIC that would provide underlying facilities-based carriers and subscribers of resellers with a way to identify the service provider; (3) modifying the independent third party verification method; (4) defining the term "subscriber" for purposes of authorizing preferred carrier changes; (5) requiring carriers to submit reports on the number of slamming complaints they receive; (6) creating a registration requirement for all providers of interstate telecommunications services; and (7) requiring unauthorized carriers to remit to authorized carriers certain amounts in addition to the amount paid by slammed subscribers.

4. On June 30, 2000, the President signed into law a piece of legislation that is relevant to our slamming rules and some of the issues pending in this proceeding, particularly our proposal in the *FNPRM* to allow the authorization and verification of preferred carrier changes using the Internet. The *Electronic Signatures in Global and National Commerce Act*, S. 761 (E-Sign Act) is intended to foster the development of e-commerce, or commerce conducted electronically over the Internet. To accomplish this goal, the E-Sign Act establishes a framework governing the use of electronic signatures and records in transactions in or affecting interstate and foreign commerce. With certain exceptions not relevant here, the provisions of the E-Sign Act took effect on October 1, 2000.

5. In this Order, we adopt a number of the proposals discussed in the *FNPRM*, and we also address the remaining issues that were raised on reconsideration of the *Section 258 Order*. Specifically, in this Order, we amend the current carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (Internet LOAs) in a

manner consistent with the new E-Sign Act; we direct the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a CIC; we provide further guidance on independent third party verification; we define the term "subscriber;" we require each carrier providing telephone exchange and/or telephone toll service to submit a semiannual report on the number of slamming complaints it receives; and we expand the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that will assist our enforcement efforts. This Order also contains a Second Order on Reconsideration, in which we uphold our rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. In addition, we reaffirm our decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of Section 258. We also decline to adopt a 30-day limit on the amount of time an LOA confirming a carrier change request should be considered valid and instead adopt a 60-day limit. Finally, we clarify certain of our rules regarding the payment of preferred carrier change charges after a slam.

## II. Third Report and Order

### A. Preferred Carrier Changes Using the Internet

6. *Discussion.* We continue to believe that the Internet provides a quick and efficient means of signing up new subscribers and should be made widely available to carriers and consumers. We recognize that consumers' use of the Internet for electronic commerce has grown tremendously in recent years, as more and more businesses provide services online, and a greater percentage of consumers and businesses utilize computers and the Internet to transact business. In addition, we recognize that Section 104(e) of the E-Sign Act directs us not to differentiate between written LOAs and LOAs that are submitted and signed electronically. In view of these developments, we hereby amend our carrier change authorization and verification rules to expressly permit the use of Internet LOAs, in a manner consistent with the provisions of the E-Sign Act.

### 1. Authorization and Verification of Internet LOAs.

7. As stated in the *FNPRM*, we believe that subscribers using the Internet to change telecommunications service providers are entitled to the same level of protection against slamming that we have mandated for other forms of solicitation. Internet LOAs must comply with the requirements of our rules governing written LOAs, subject to the clarifications and modifications adopted in this Order. Carriers who wish to sign up new subscribers over the Internet must adhere to the informational requirements for written LOAs, as specified in § 64.1130(e) of our existing rules. In light of the E-Sign Act, we now conclude that an electronic signature used for a carrier change submitted over the Internet will satisfy the signature requirement of § 64.1130(b) governing LOAs, and that the information submitted to authorize and verify a carrier change request may be submitted in the form of an electronic record.

8. Carriers using Internet LOAs to sign up subscribers will be required to comply with the consumer disclosure requirements of Section 101(c) of the E-Sign Act. Section 101(c) requires, among other things, that the carrier obtain the subscriber's consent to use electronic records, obtain the subscriber's acknowledgment that he or she has the software and hardware necessary to access the information in the electronic form (*i.e.*, Internet LOA) used by the carrier, and give the subscriber notice of the procedures for withdrawing consent. Section 101(c) also requires carriers to inform subscribers of any right (after consent to the transaction) to a non-electronic (that is, paper) copy of the electronic record of the transaction, to tell them how to obtain such a copy, and to make clear whether a fee will be charged for the copy. Accordingly, we modify our rules to incorporate by reference the requirements of Section 101(c) of the E-Sign Act. We note that these consumer disclosures, in conjunction with the form and content requirements for LOAs under § 64.1130 of our rules, are likely to address concerns about unwary consumers who might inadvertently switch their telephone service providers while exploring websites or participating in contests on the Internet. At the same time, we recognize that many commenters expressed concerns regarding fraudulent use of Internet LOAs that may not be fully addressed by the protections afforded by compliance with Section 101(c) of the E-Sign Act. In this regard, we note that, if a subscriber contests the authenticity of

an Internet LOA, the carrier will have the burden of proof to counter the subscriber's allegation. For this reason, we would expect a carrier to employ procedures that would enable it to demonstrate that the electronic signature on an Internet LOA could not have been submitted by anyone other than the subscriber. While it is our expectation that the consumer protection measures afforded by the combination of the requirements in the E-Sign Act and our LOA rules will suffice, we note that, if we detect an inordinate increase in slamming after these changes take effect, we may choose to re-evaluate our rules.

9. We are aware that some consumers may be concerned about security and privacy issues associated with submitting carrier change requests and associated personal information over the Internet. Security and privacy issues arise because Internet communications are sent from computer to computer until the communications reach their final destinations. When information is sent from point A to point B over the Internet, every computer involved in the transmission path has an opportunity to intercept and view the information being sent. As a result, we acknowledge the concerns of commenters who argue that carriers should provide subscribers with a secured web transaction for submitting Internet LOAs. At this time, we decline to impose specific requirements regarding security and privacy as it relates to Internet LOAs, but we strongly encourage carriers who utilize Internet LOAs to sign up new subscribers to employ security measures in keeping with the best practices used for Internet transactions, such as providing subscribers with secured web access. In addition, we strongly encourage carriers to provide notice to subscribers regarding the level of security that applies to the submission of Internet LOAs. We also support the use of digital signatures, when they are made widely available, in order to more precisely establish the identity of the subscriber submitting an Internet LOA, the date of the submission, and other specifics.

10. We also acknowledge that consumers have a legitimate interest in the privacy of personal information that they may be asked to submit with an Internet LOA. Again, we decline to mandate a specific action with regard to such information at this time. However, we encourage carriers to keep such information confidential and not use a subscriber's information, including his or her electronic mail (e-mail) address, for marketing or other business purposes without the express consent of

the subscriber. In addition, we recognize that some consumers may prefer, for a variety of reasons, not to use the Internet to authorize carrier changes. Consistent with Section 101(b)(2) of the E-Sign Act, we will amend our rules to state that carriers must give subscribers the option of using one of the other authorization and verification methods specified in § 64.1120 of our rules, in addition to the use of Internet LOAs.

## 2. Pre-Existing Relationships

11. We recognize that some carriers and subscribers who have pre-existing business relationships may wish to follow a more truncated authorization and verification process for making carrier changes than required for written and Internet LOAs. AOL and other commenters assert that subscribers and carriers belonging to a closed user group (CUG) or linked in a similar ongoing business relationship should be permitted to utilize a less stringent verification method for Internet LOAs. However, we see no compelling reason to determine that our LOA rules, which are designed to protect subscribers, should apply to a lesser degree when the subscriber belongs to a CUG or has a similar type of pre-existing relationship with the carrier. Therefore, at this time, we decline to permit carriers and subscribers with pre-existing business relationships, such as CUG providers and members, to use less stringent verification methods to authorize and verify carrier changes processed over the Internet.

## 3. Separate Screen Requirement

12. In the *FNPRM*, we sought comment on the extent to which change requests submitted over the Internet may or may not contain all the required elements of a valid LOA, and we also sought comment on ways in which we might ensure that consumer interests are protected when Internet LOAs are used. In certain respects, our existing rules on the form and content of LOAs reflect the fact that they were written with paper documents in mind. For example, a written LOA must be a separate document not combined with inducements of any kind. In order to conform Internet LOAs to this preexisting requirement, we amend our rules to specify that Internet LOAs must appear on a separate screen from any inducements or solicitations for a carrier's services and contain only the authorizing language found in § 64.1130(e) of our rules. We regard this requirement as the functional equivalent of the pre-existing requirements that a written LOA must be a separate document not combined with

inducements of any kind. Moreover, as noted by several commenters, this separate screen requirement is easily achievable and is necessary to eliminate the possibility of customer confusion and the potential for inadvertent selection of a new preferred carrier.

13. We believe that this determination is consistent with Section 104(b)(2)(C) of the E-Sign Act. That section of the E-Sign Act allows agencies to include requirements for electronic records that are "substantially equivalent to the requirements imposed on records that are not electronic records," that will not "impose unreasonable costs on the acceptance and use of electronic records," and will not "require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification for performing the functions of creating, storing, generating, receiving, communicating, or authenticating electronic records or electronic signatures." As stated above, this separate screen requirement is substantially equivalent to the requirements found in §§ 64.1130(b) and (c) as they apply to written LOAs. Moreover, the record in this proceeding indicates that this separate screen requirement will not impose unreasonable costs on the acceptance and use of electronic records.

## 4. Choice of Telecommunications Services

14. We adopt our tentative conclusion that carriers who solicit service over the Internet and require subscribers to sign up for more than one service (e.g., interLATA and intraLATA) in order to authorize a carrier change, rather than giving subscribers the option of signing up for individual services, violate our rule requiring all LOAs to contain separate statements regarding choices of interLATA and intraLATA toll service. While we presented this issue in the *FNPRM* as a "general concern[] about the content of the solicitation using the Internet" and cited some IXC webpages as examples of the practice, we note that there is no reason to believe this type of inappropriate carrier change solicitation would only appear in an electronic medium. We emphasize that carriers must clearly and conspicuously delineate on any LOA, written or Internet, the individual services that the subscriber may choose to be covered by the carrier change request, including, but not limited to, local, intraLATA, and interLATA services. Consumers should know what specific services are being offered and should have the discretion to subscribe to only the services they desire. Such consumer choice and

discretion are essential to maintaining and advancing the development of a competitive telecommunications marketplace.

## 5. Preferred Carrier Freeze

15. Consistent with our amendment of the rules governing LOAs, we are also amending our rules to allow subscribers to submit, and carriers to process, the imposition and/or lifting of preferred carrier freezes over the Internet, as recommended by many commenters. Carriers must comply with the same verification requirements that apply to LOAs, as discussed, to help prevent the unauthorized imposition or lifting of preferred carrier freezes over the Internet. In addition, we encourage carriers to employ measures to protect the security and confidentiality of subscribers' personal information.

## 6. State Authority

16. We note that the amendments to our rules that we adopt in this Order for Internet LOAs represent a minimum threshold for carrier change authorization and verification with which all carriers must comply. State jurisdictions may adopt verification requirements for Internet LOAs, so long as they are consistent with Section 258, as implemented by our rules, and the E-Sign Act. We disagree with Cable & Wireless that we should preempt state laws regarding the legality and form of Internet LOAs at this time. Carriers already must comply with state requirements for written LOAs that are consistent with Section 258 and the Commission's rules, and state requirements for Internet LOAs that are consistent with Section 258, as implemented by our rules, and the E-Sign Act warrant the same compliance.

## B. Resellers and CICs

17. *Discussion.* As set forth below, we shall direct the NANPA to eliminate the requirement that carriers purchase "Feature Group D" to obtain CICs. This action will facilitate the assignment of CICs to switchless resellers and remove one obstacle to their independent use of CICs. At the present time, we are not requiring resellers to obtain their own CICs, nor are we adopting either of our other two proposals. Although we believe that requiring switchless resellers to obtain CICs may well be an effective solution to soft slamming and related carrier identification problems, commenters have raised a number of concerns regarding the potential impact of such a requirement on the carrier industry. Based on our review of the record, as discussed herein, we are not persuaded that we should adopt a CIC

requirement for switchless resellers at this time. However, in order to continue developing the record, we shall refer the CIC assignment and use issues discussed below to the North American Numbering Council (NANC) for analysis and recommendations. We intend to reevaluate the costs and benefits of the proposed CIC requirement when we receive the NANC's report.

18. Under the current CIC Assignment Guidelines, a carrier must purchase Feature Group D access service to be assigned a CIC. A switchless reseller does not require the physical or trunk access to the public switched telephone network (PSTN) available through the purchase of Feature Group D, and is unlikely to bear the expense simply to obtain a CIC. The NANC's CIC Ad Hoc Working Group has recommended elimination of the Feature Group D requirement as "an unnecessary administrative burden for resale providers[.]" In light of this recommendation, and based on our examination of the record in this proceeding, we direct the NANPA to eliminate the Feature Group D requirement. This action, which is an aspect of our first proposal, "will facilitate the assignment of CICs to resellers, and thereby allow easier [carrier] identification \* \* \*, enhancing the ability to resolve conflicts, including disputes which involve slamming."

19. Commenters are divided on our proposal to require switchless resellers to obtain their own CICs. Generally, supporters argue that it would be a cost-effective and administratively simple solution to soft slamming and related problems. Opponents raise a number of concerns regarding the impact of a CIC requirement on the carrier industry, including that it would: (1) Impose undue financial burdens on resellers and damage them competitively; (2) require expensive and time-consuming LEC switch upgrades; and (3) accelerate exhaustion of the four-digit CIC pool. Opponents also contend that the record contains insufficient evidence of the dimensions of soft slamming and related problems to warrant regulatory action and, in any event, that other recent Commission actions are likely to address such problems. We address these issues in turn below.

20. Turning to the first issue, the principal cost of the subject proposal for a switchless reseller would be deploying or loading a CIC in LEC switches in each LATA where it operates. In this regard, "the use of translations access does not significantly reduce the time or expense required" to deploy a CIC. On a nationwide basis, most estimates of this cost range from \$500,000 to \$1 million

for a single CIC. Relying on such estimates, and on the small size of many resellers, opponents maintain that a CIC requirement would create a substantial market entry barrier for resellers. Our review of the record suggests that in many cases such estimates are unrealistic because resellers typically operate on a regional basis. In addition, CIC deployment costs may be viewed as "a legitimate cost of doing business," and the independent use of CICs clearly has competitive advantages for resellers. Nevertheless, we are concerned about restricting competition in the wholesale long distance service market by limiting resellers' ability to change and/or use multiple underlying carriers. Although some resellers use their own CICs despite the asserted disadvantages, we are reluctant to adopt a requirement that resellers obtain their own CICs pending further review of the conclusions reached by the NANC.

21. Second, GTE, SBC, and USTA express concern that a CIC requirement may exhaust the limited capacity of certain types of LEC switches. For example, GTE states that:

[GTE] generally averages over two hundred CICs per switch in its 1600 plus switches. Almost half of these switches have a capacity of only 255 codes today. \* \* \* The GTD5 switch, which comprises over a third of [GTE's] total, has a capacity of only 500 CICs. A 500 CIC capacity could well be insufficient in some locations to handle all resellers who would obtain CICs. \* \* \* [GTE] cannot add any new CICs to its switches in Hawaii because international operations have already utilized the total capacity.

It is unclear how many LEC switches are implicated by this issue, as only GTE has identified the number of limited-capacity switches deployed in its territory, and the likelihood of exhausting switch capacity depends on the related questions of demand and location. To the extent that upgrades are necessary, however, GTE, SBC, and USTA state that they are likely to be costly and time-consuming. Furthermore, although the need for upgrades was contemplated when the carrier industry moved from a three-digit to a four-digit CIC format, USTA suggests that requiring investment in switch upgrades may be wasteful because the industry now is moving towards new technology platforms. There may be ways to ensure that any systems modifications necessary to accommodate the use of additional CICs do not impose undue burdens on LECs. Nevertheless, we believe that this matter warrants further consideration.

22. Third, several commenters argue that adoption of a CIC requirement would accelerate exhaustion of the pool

of four-digit CICs, thereby inflicting undue disruption and expense on the entire carrier industry. Preliminarily, we find no compelling evidence of a significant threat of premature CIC exhaustion. The pool of four-digit CICs is 10,000, of which only 2,031 were assigned as of January, 2000, and the NANC *CIC Report* predicts that they will last for 22 years, assuming a limit of six per carrier. In addition, it is not clear that the subject proposal would substantially increase the long-term net demand for CICs, given that some resellers already have CICs, and those without CICs are likely to obtain them as their businesses develop, without any regulatory requirement.

23. Turning to the fourth issue, there is a consensus among commenters that the shared use of CICs by resellers gives rise to significant problems that warrant Commission action. Opponents of the subject proposal, however, argue that the record contains insufficient evidence for us to determine whether a CIC requirement is warranted in light of its potential costs. The Commission does not maintain data as to the specific dimensions of these problems, but our review of the record suggests that they represent a substantial percentage of all slamming complaints. We agree, however, that recent Commission actions in this proceeding and in the *Truth-in-Billing* proceeding may help to address soft slamming and related problems indirectly. In this regard, Bell Atlantic and USTA point out that the *Section 258 Order* imposes on facilities-based carriers the responsibilities of executing carriers in soft slam situations, and AT&T notes that the framework of the slamming rules is "intended to increase effective deterrence of slamming, including \* \* \* soft slamming." In the *Truth-in-Billing* proceeding, the Commission adopted a rule that the name of the service provider associated with each charge must be clearly and conspicuously identified on the telephone bill. AT&T contends that this action "should substantially alleviate the 'soft slamming' problem by making unauthorized carrier changes readily detectable by end users."

24. Based on our review of the record as a whole, we are not persuaded that we should adopt a CIC requirement at this time. Rather, as explained below, we wish to have more information on the financial and competitive issues discussed herein before imposing a CIC requirement. By directing that the Feature Group D requirement be eliminated, we are taking a step that will facilitate the ability of switchless resellers to obtain and use their own

CICs, while allowing them to choose whether to do so based on their own competitive needs. Nevertheless, we continue to believe that requiring resellers to obtain their own CICs holds promise as a direct and effective solution to the significant problems that arise from the shared use of CICs. We therefore wish to continue developing a record on the subject proposal, in order to be in a position to take informed and expeditious action, should we deem it necessary to do so. Accordingly, we shall refer the CIC use and assignment issues discussed herein to the NANC for analysis and recommendations. To the extent possible, we also request that the NANC submit any data it develops that may shed light on the financial and competitive issues discussed herein, as well as the dimensions of soft slamming and related problems. We request that the NANC provide its report to the Commission by August 1, 2001. We intend to reassess the costs and benefits of the proposed CIC requirement after receiving the NANC's report. In the meantime, we anticipate that the reporting requirements we adopt herein will help to furnish us with more data as to the ongoing significance of the problems at issue and the impact of the Commission's recent anti-slamming and truth-in-billing measures.

25. Finally, we conclude that adoption of either the second or the third proposals set forth in the *FNPRM* would not serve the public interest. Whereas a CIC requirement would rely on existing call routing and billing systems and provide consumers with equal access to switchless resellers, the "pseudo-CIC" proposal would require extensive systems modifications by both LECs and underlying carriers, without the advantage of equal access. Commenters argue persuasively that the third proposal, carrier systems modifications, is not viable because, among other things, it would be costly and time-consuming to implement, would be likely to complicate and delay the carrier change process, and would not comport with existing billing systems.

### C. Independent Third Party Verification

34. *Discussion.* The first issue we address is whether a carrier's sales representative should be permitted to remain on the line during the three-way verification call. NAAG raises concerns that the subscriber might remain under the influence of the sales representative during the verification process. NAAG argues that third party verification should be separated completely from the sales transaction, so that a carrier would not be permitted to connect the

subscriber to the third party verifier by initiating a three-way call. Other commenters support allowing the carrier's representative to remain on the line during the three-way conference call.

35. As we stated in the *FNPRM*, the three-way call is often the most efficient means of accomplishing third party verification. We believe that subscribers may benefit from the convenience of authorizing and verifying the carrier change in one phone call. In addition, use of this method of verification minimizes the risk that the subscriber will not be available when the third party verifier calls to confirm the change.

36. Some commenters propose that the Commission impose certain limited restrictions on such calls to ensure that the verification process will not become tainted, cause subscriber confusion, or go forward without the subscriber's express consent. The proposed restrictions range from prohibiting carriers from remaining on the line once a connection is established with the third party verifier to requiring that all conversation on a three-way conference call be recorded.

37. We agree with NAAG and others that the Commission should delineate minimum requirements to ensure that verification ultimately involves only the consumer and the third party verifier. Given the convenience and cost-effectiveness of the three-way conference call as a verification method, we will retain the three-way call as a verification method, subject to one limited restriction. The carrier's sales representative may initiate the three-way conference call but must drop off the call once the connection has been established between the subscriber and the third party verifier. We believe that this limited restriction will help ensure the independence of the third party verification process and prevent the carrier's sales representative from improperly influencing subscribers, without burdening the verification process. Once the connection has been established between the subscriber and the third party verifier, there is no need for the carrier's sales representative to stay on the line.

38. With respect to the content and format of the third party verification, we asked parties in the *FNPRM* to comment on a possible requirement that all third party verifications include certain information, such as information on preferred carrier freezes or the carrier change process. We also asked parties to comment on any benefits that might be gained from permitting or requiring third party verifiers to provide

subscribers with such additional information. This proposal generated both strong support and opposition. Although many commenters argue that requiring third party verifiers to follow a scripted format would impose unnecessary, additional rules on the carrier change process without producing a significant corresponding benefit, several other commenters ask the Commission for additional guidance regarding the format and content of the third party verification. For instance, Media One states that third party verifiers should be required to confirm the identity of the subscriber, to ascertain that the person contacted is authorized to make a change, and to frame the request for confirmation of the change as a simple yes/no question.

39. We decline to mandate specific language to be used in third party verification calls. In order to eliminate uncertainty as to what practices are necessary and acceptable, however, we adopt minimum content requirements for third party verification. We believe that having minimum content requirements for third party verification calls will provide useful guidance to the third party verifiers and carriers without locking carriers into using a set script. These requirements also allow for more streamlined enforcement because they will assist the Commission in determining the adequacy of steps taken by independent third parties in the verification process. Accordingly, we conclude that a script for third party verification should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). We note that these content requirements do not differ in substance from our rules regarding LOAs.

40. In addition, the third party verification must be conducted in the same language that was used in the underlying sales transaction. We also conclude that the entire third party verification transaction must be recorded, a practice that is already common in the industry. Consistent with our requirements under § 64.1120(a)(1)(ii), submitting carriers must maintain and preserve these recordings for a minimum period of two years after obtaining such verification. If a slamming dispute arises, having a recorded verification will help determine whether the subscriber was

simply seeking information or was in fact agreeing to change carriers and, if so, which service(s) the subscriber agreed to change.

41. We further conclude that third party verifiers may not dispense information concerning the carrier or its services, including information regarding preferred carrier freeze procedures or other non-telecommunications services that the carrier may offer to the subscriber. Allowing third party verifiers to effectively market the carrier's services could compromise the third party verifiers' independence and neutrality because verifiers could easily be drawn into presenting the particular market viewpoints of carriers by whom they are retained. In addition, providing the verifier with certain carrier information could result in the disclosure of proprietary information to competing carriers. We also believe that incorporating information about preferred carrier freezes into the verification script is likely to be confusing to subscribers and would prolong the verification process unnecessarily.

42. Finally, we conclude that automated systems that preserve the independence of the third party verification process may be used to verify carrier change requests. The use of automated third party verification systems not only promotes consistency in the verification process and adequacy of the information provided to subscribers, but also gives carriers a cost-effective way to create a readily accessible record of each order confirmation. Moreover, the recordings generated by this automated process may be useful in addressing subscriber complaints of slamming. For instance, the recording can reveal whether the carrier change at issue was properly verified and whether an authorized person provided the verification. Automated systems may also help provide predictable and consistent service.

43. Although several commenters argue that using automated verification systems that record the verification should obviate the need for more detailed script requirements, we conclude that these systems should elicit, at a minimum, the same information that our rules currently require, as well as the information specified. To reiterate, automated verification systems must elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of

the carriers affected by the change; the telephone numbers to be switched; and the types of service affected by the transaction (*i.e.*, local, in-state toll, out-of-state toll, or international service). In addition, automated verifications must be conducted in the same language that was used in the underlying sales transaction and must be recorded in their entirety to ensure that there is a record of the verification in the event of a slamming dispute. As with the three-way conference call, and for the same reasons, a carrier's sales representative initiating the automated verification call may not remain on the line after the connection has been established. We further conclude that automated verification systems should provide subscribers with an option of speaking with a live person at any time during the call. We believe that, in situations where the subscriber cannot follow the prompts of an automated system (or has questions once the automated verification commences), the subscriber should be able to reach a live person who can complete the process. If the subscriber does not want to complete the verification process, or is unable to do so, the third party verifier must end the call, and the transaction must be treated as unverified.

44. We note that, although our rules do not generally prohibit automated third party verification systems, certain types of automated verification systems undermine the independence requirement and contradict the intent behind our rules to produce evidence, independent of the telemarketing carrier, that a subscriber wishes to change his or her carrier. In particular, we conclude that the "live-scripted" automated verification system is at odds with our rules because it permits the carrier's agent, who is not an independent party located in a separate physical location, to solicit the subscriber's confirmation. From a subscriber perspective, the "live-scripted" version may be appealing because the subscriber is interacting with a live person, even though that person is following a set script. The fact that the questions on the script are being read by the carrier's sales representative, however, compromises the independence of the verification. The risk that the sales representative may ask the questions in a pressuring or misleading manner is inherent in the "live-scripted" version. Because the carrier's sales representative is usually compensated for sales completed, and not for sales attempts, the sales representative could not be considered an unbiased third party that lacks

motivation to influence the outcome of the verification process.

#### *D. Definition of "Subscriber"*

45. *Discussion.* Based on our consideration of the comments filed in this proceeding, we adopt the following definition of the term "subscriber" for purposes of our rules implementing Section 258 of the Act: "The party identified in the account records of a common carrier as responsible for payment of the telephone bill, any adult person authorized by such party to change telecommunications services or to charge services to the account, and any person contractually or otherwise lawfully authorized to represent such party." We believe that this definition will serve our public interest goals of promoting consumer protection, consumer convenience, and competition in telecommunications services. Specifically, this definition will allow customers of record to authorize additional persons to make telecommunications decisions, while protecting consumers by giving the customers of record control over who is authorized to make such decisions on their behalf. In addition, this definition will provide carriers with the flexibility to establish authorization procedures that are appropriate to their own and their customers' needs, consistent with the framework of our rules.

46. The definition we adopt is similar to the SBC proposal set forth in the *FNPRM*, in that it allows customers of record to authorize additional persons to make telecommunications decisions. We believe that it is preferable to the SBC proposal, however, because it clearly identifies the customer of record as the source of authority over who is authorized to make telecommunications decisions. In addition, the definition we adopt distinguishes between two different types of authority: (1) Authority based on the express or implied authorization of the customer of record, as reflected in carrier account records or elsewhere; and (2) authority based on federal and/or state law and regulations concerning agency and authority.

47. The principal concern expressed by commenters opposed to a definition that allows customers of record to authorize additional persons to make telecommunications decisions is that such a definition invites disputes among household members. We conclude that this concern does not warrant restricting customer options. Commenters favoring a broad definition generally indicate that the current carrier practice is to allow persons other than the customer of record to make telecommunications

decisions subject to varying authorization procedures, and that consumers expect and value this service. Examination of the record does not indicate that this practice has given rise to a substantial number of slamming complaints. Moreover, as discussed below, we believe that our current rules provide sufficient incentives for carriers to adopt appropriate safeguards to ensure that only authorized persons are permitted to change telecommunications services. Absent more concrete evidence of the likelihood of harm to consumers, we agree with the majority of commenters that consumers "should be able to make decisions about their preferred carrier [and] delegate that authority if needed[.]"

48. We emphasize that, by adopting a definition, we are not imposing additional responsibilities on carriers in the submission or execution of carrier changes. Rather, carriers' responsibilities are determined by the framework of the current rules. Under these rules, submitting carriers are subject to liability for the submission of unauthorized changes, regardless of intent. As we held in the *Section 258 Order*, strict liability "provides appropriate incentives for carriers to obtain authorization properly and to implement their verification procedures in a trustworthy manner." Within this framework, the definition that we adopt will permit submitting carriers to utilize varying authorization procedures based on their own and their customers' needs, without tolerating procedures likely to enable unauthorized persons to make telecommunications decisions. With regard to executing carriers, their responsibility is limited to prompt execution of changes verified by a submitting carrier. Carriers that execute changes verified by submitting carriers are not subject to liability for unauthorized changes. For these reasons, we are not concerned that the definition we adopt will impose unreasonable burdens on executing carriers.

49. In sum, we believe the "subscriber" definition that we adopt herein will serve our public interest goals of promoting consumer convenience and competition in telecommunications services, without leading to increased slamming. The definition we adopt is consistent with the framework of our rules and will enable carriers to adopt safeguards against unauthorized carrier changes that are suited to their own and their customers' needs.

#### *E. Submission of Reports by Carriers*

50. *Discussion.* We will require carriers providing telephone exchange and/or telephone toll service to periodically submit reports regarding slamming complaints they received. Carriers objecting to this reporting requirement are concerned that the reports on slamming complaints received by carriers would produce inaccurate and misleading information. Specifically, these carriers argue that such information, when provided by LECs, will inflate the number of slams attributed to other carriers because what is reported is the total number of slamming allegations, without reference to their validity or their underlying causes. We believe the reporting requirement adopted herein is designed to address these concerns, and we are confident that reliance on the reported information as an "early warning" system will not misdirect the enforcement of the Commission's slamming rules. Moreover, the information will be invaluable in enabling the Commission to identify, as soon as possible, the carriers who repeatedly initiate unauthorized changes. In addition, because the reports will be available for public inspection, they may compel carriers to reduce slamming on their own to avoid public embarrassment or loss of goodwill.

51. We recognize that a subscriber complaint is not, in and of itself, dispositive proof of a slam. Nevertheless, an excessive number of complaints directed at a particular carrier, or an increase in the number of such complaints, suggests that an immediate investigation into that carrier's practices may be warranted. Accordingly, to assist our enforcement efforts in this area, we conclude that each carrier providing telephone exchange and/or telephone toll service must submit to the Commission via e-mail, U.S. Mail, or facsimile, a slamming complaint reporting form which will identify the number of slamming complaints received and state the number of such complaints that the carrier has investigated and found to be valid. This report also must include the number of slamming complaints involving local intrastate and interstate interexchange service, investigated or not, that the carrier has chosen to resolve directly with subscribers. Moreover, because most subscribers who are slammed by an IXC report the slam to their LEC, rather than the IXC, LECs should include in their reports the name of each entity against which slamming complaints have been

directed and the number of complaints involving unauthorized changes that have been lodged against each entity. Carriers shall file their first slamming complaint reports on August 15, 2001, to cover the period commencing on the effective date of this requirement, as announced in the **Federal Register**, and ending on June 30, 2001. Reports for the second half of 2001 shall be filed on February 15, 2002, covering the period between July 1, 2001 and December 31, 2001. Thereafter, carriers shall submit their semiannual slamming complaint reports on August 15 (covering January 1 through June 30) and on February 15 (covering July 1 through December 31). The slamming complaint reporting form may be obtained in the Commission's Public Reference Room or by accessing the Commission's website.

52. Based on the record before us, we do not believe that this requirement will impose significant additional costs or administrative burdens on carriers. Indeed, several carriers have indicated that they already track slamming complaints received from subscribers. It would be a reasonable business practice for all telecommunications carriers, including small carriers, to track slamming complaints they receive in the course of their business; we would be surprised if carriers did not do this. Thus, we do not believe we are requiring carriers to keep information that they would not otherwise keep.

#### *F. Registration Requirement*

53. *Discussion.* The Commission currently requires carriers providing interstate interexchange telecommunications service to submit various types of information, and the Commission recently streamlined many of these information collection requirements. For example, the Commission has consolidated several different worksheets into the Telecommunications Reporting Worksheet (FCC Form 499), which is used to calculate carriers' contributions to fund four different programs: interstate telecommunications relay service (TRS), federal universal service support mechanisms, the cost-recovery mechanism for the North American Numbering Plan Administration, and the cost recovery mechanism for the shared costs of long-term local number portability. In addition, to assist carriers in meeting the requirement of Section 1.47 of our rules that all common carriers must designate an agent for service of process in the District of Columbia, we have allowed carriers to report such information on the Form 499. Our rules now provide that carriers may file the relevant portion of the

Form 499 with the Commission to satisfy this requirement, and must update the information about the registered agent for service of process by submitting the revised portion of the Form 499 to the Chief of the Enforcement Bureau's Market Disputes Resolution Division within one week of any changes. The rules also provide that a paper copy of the designation list shall be maintained in the Office of the Secretary of the Commission.

54. We adopt our tentative conclusion that all new and existing common carriers providing interstate telecommunications service must register with the Commission. We believe such a registration requirement will bolster our efforts to curb slamming by enabling us to monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming activity. This requirement will also enhance our ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming. Slammers that simply change their names and/or move to different jurisdictions will find it difficult to escape detection if they cannot escape the obligation to register with the Commission. This registration information will enable the Commission to identify those entities providing interstate telecommunications service, it will complement the certification and registration requirements in effect in almost every state for intrastate service providers, and it will enable the Commission and state authorities to coordinate enforcement actions through the creation of a central repository of key facts about carriers providing interstate telecommunications.

55. While we decline to rely exclusively on existing annual reporting mechanisms, we are mindful of the importance of not overburdening carriers with obligations. Therefore, we will revise the annually-filed Telecommunications Reporting Worksheet (FCC Form 499-A), which must be filed by all telecommunications carriers in April of each year, to include the following additional information that is targeted to assist our anti-slamming efforts and thereby minimize the burden of this registration requirement: the carrier's business name(s) and primary address; the names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company; the carrier's regulatory contact and/or designated agent for service of process; all names under

which the carrier has conducted business in the past; and the state(s) in which the carrier provides telecommunications service. The next scheduled filing of the Form 499-A is April 1, 2001, at which time carriers will file the revised form containing the additional information described above in accordance with the Instructions to FCC Form 499-A. This information shall be submitted under oath and penalty of perjury, and must be updated to reflect any changes. Pursuant to the existing requirement in § 1.47 of our rules, a carrier shall update its registration to reflect any changes by submitting the revised relevant portion of the FCC Form 499-A within no more than one week of the change. The Commission will make the registration information described above available for public inspection in its reference room and on its website.

56. We believe that all carriers providing interstate telecommunications service, including small carriers providing such service, should be able to submit this information without much expense or difficulty because it is readily available and, to a large degree, must already be submitted in state jurisdictions. In addition, we note that making the registration information part of an existing form that must be completed and submitted for other obligations will minimize the burden on carriers. We therefore conclude that carriers failing to register with the Commission may, after notice and opportunity to respond, be subject to a fine. Carriers providing false or misleading information in their registrations may have their operating authority revoked or suspended, after receiving appropriate notice and opportunity to respond.

57. We further conclude that any telecommunications carrier providing telecommunications service for resale shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, a reseller) has filed a registration with the Commission *prior to* providing that carrier-customer with service. Once the telecommunications carrier that provides telecommunications service for resale determines the registration status of its potential carrier-customer, such carrier will not be responsible for monitoring the registration status of that customer on an ongoing basis, although we believe that a prudent carrier may choose to do so. In situations where such carrier is currently providing a reseller with service, we direct the reseller to notify its underlying carrier that it has submitted the registration

information to the Commission, within a week of having done so.

58. We note that a telecommunications carrier providing telecommunications service for resale will not be responsible for the accuracy of the registration provided to the Commission by its potential carrier-customer, nor will such carrier, relying in good faith on the absence of such registration, be liable under Section 251 of the Act for withholding service from the unregistered entity. The Commission may, however, after giving appropriate notice and opportunity to respond, impose a fine on carriers that fail to determine the registration status of other carriers before providing them with service. The dollar amount of the fine imposed on such carrier for failing to meet its affirmative duty with respect to an unregistered reseller will depend on the egregiousness of the facts surrounding the particular incident. We conclude that this will deter carriers from providing service to resellers that have not registered with the Commission, which will, in turn, make it more difficult for "bad actor" resellers to stay in business.

#### *G. Recovery of Additional Amounts from Unauthorized Carriers*

59. *Discussion.* We believe that the issue of recovery of additional amounts from unauthorized carriers has been effectively resolved in the context of our *First Reconsideration Order*. As discussed, in that order, we reaffirmed our decision to absolve consumers of liability for slamming charges for a limited period of time, *i.e.*, within the first 30 days after the unauthorized change. We established procedures that apply when a consumer has not paid charges to the slamming carrier and also modified the liability rules that apply when a subscriber has paid charges to a slamming carrier. Specifically, we concluded that, when the slamming carrier receives payment from the subscriber, such carrier must pay out 150% of the collected charges to the authorized carrier, which, in turn, will pay to the subscriber 50% of his or her original payment. In addition, the order provides specific notification requirements to facilitate carriers' compliance with the liability rules. Given these modifications, we do not believe that there is a need for further action in this area at the present time.

### III. Second Order on Reconsideration

#### A. Administration of Preferred Carrier Freezes

##### 1. IXC Submission of Preferred Carrier Freeze Orders and Freeze Lifts

60. Several parties argue on reconsideration that the Commission should allow carriers to verify and submit orders to implement or lift preferred carrier freezes, just as the Commission allows carriers to verify and submit preferred carrier change orders. We decline to modify our rules and retain the requirement that subscribers must implement or lift preferred carrier freezes through contact with their local carriers.

61. In the *Section 258 Order*, we decided carriers should not be permitted to submit preferred carrier freeze lifts, even if those lift orders were first verified by a neutral third party. We stated that “the essence of a preferred carrier freeze is that a subscriber must specifically communicate his or her intent to request or lift a freeze [and it is this] limitation on lifting preferred carrier freezes that gives the freeze mechanism its protective effect.” We determined that subscribers would gain no additional protection from the implementation of a preferred carrier freeze if we were to allow third party verification of a carrier change to override a preferred carrier freeze. Although such a proposal minimizes the risk that unscrupulous carriers might attempt to impose preferred carrier freezes without the consent of subscribers, we concluded that it frustrates the subscriber’s ability to change carriers. Petitioners have not persuaded us that we erred in making these determinations. We therefore affirm our decision that only a subscriber may request or lift a preferred carrier freeze.

62. Consistent with this purpose, we also take this opportunity to clarify that LECs may not accept preferred carrier freeze orders from carriers on behalf of subscribers, even if they are properly verified. We believe that limiting the submission of preferred carrier freeze requests to subscribers will help curb the potential for abuse by slamming carriers. To interpret our rules otherwise would undermine the effectiveness of preferred carrier freezes. For example, if a slamming carrier were allowed to submit an unauthorized freeze order with an unauthorized change order, not only would the subscriber be slammed, but it would also be more difficult for the subscriber to be switched back to the authorized carrier because of the unauthorized freeze. This freeze

mechanism assures that no carrier change is processed without the direct involvement of the subscriber.

##### 2. Simultaneous Submission of Preferred Carrier Change Requests and Preferred Carrier Freeze Requests

63. RCN and Excel seek clarification that a subscriber request a change and obtain a preferred carrier freeze in the same transaction. Nothing in our rules prohibits a subscriber from changing a carrier and requesting a freeze in the same transaction. We emphasize that the LEC must, however, verify both the freeze request and the carrier change request in accordance with our rules. Specifically, the LEC must obtain a Letter of Agency, electronic authorization, or third party verification that applies to the freeze request and, if the LEC is the provider of the requested long distance service, the LEC must also properly verify the carrier change request. We note that, in situations where a customer initiates or changes long distance service by contacting the LEC directly, verification of the customer’s choice is not necessary by either the LEC or the chosen IXC because neither carrier is the “submitting carrier” as we have defined it.

##### 3. Effecting Freeze Lifts and Change Requests in the Same Three-Way Call

64. MCI asks the Commission to clarify that executing carriers have an obligation to lift a preferred carrier freeze and switch a customer during the same three-way call. MCI states that it has experienced difficulties in making authorized carrier changes where preferred carrier freezes have been in place. MCI explains that, after a carrier change request is properly verified, MCI electronically sends the request to the executing carrier. In situations where the customer has a preferred carrier freeze in place, but may have forgotten, the change request has been rejected by the executing carrier. At that point, MCI states that it contacts the customer and initiates a three-way call between the executing carrier, the customer, and MCI. According to MCI, the executing carrier will only sometimes accept the three-way call, will only sometimes lift the preferred carrier freeze during the three-way call, and will never execute the carrier change during the three-way call. Thus, MCI appears to argue that, in situations where the submitting carrier initiates a three-way call for the purpose of simultaneously lifting a preferred carrier freeze and submitting a carrier change request that has been already properly verified, the Commission should require the executing carrier to

accept the freeze lift and effect the carrier change request in the same three-way call.

65. Although we agree with MCI that accepting both freeze lift and properly verified carrier change requests during the same three-way call may be an efficient means of effectuating a consumer’s carrier change request, we need not mandate that executing carriers follow this course at this time. As we stated in the *Section 258 Order*, carriers must offer subscribers a simple, easily understandable, but secure way of lifting preferred carrier freezes in a timely manner. We concluded that LECs administering a preferred carrier freeze program must accept the subscriber’s authorization, either oral or written and signed, stating an intent to lift a preferred carrier freeze. We determined that LECs also must permit a submitting carrier to conduct a three-way conference call with the LEC and the subscriber in order to lift a freeze. Our rules do not, however, prohibit LECs from requiring submitting carriers to use separate methods for lifting a preferred carrier freeze and submitting a carrier change request. If MCI is concerned about the delay that may result from some LECs refusing to accept properly verified carrier change orders during the same three-way call initiated for the purpose of lifting a freeze, it may file a complaint in the appropriate forum.

66. We also note that, in the *Section 258 Order*, we declined to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encouraged parties to develop other methods of accurately confirming a subscriber’s identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes. We continue to believe that, as long as these other methods are secure and “impose only the minimum burdens necessary on subscribers who wish to lift a preferred carrier freeze,” we need not mandate an automated process for carrier freezes, as requested by AT&T.

67. Furthermore, for the same reasons articulated in the *Section 258 Order*, we will not require LECs administering preferred carrier freeze programs to make subscriber freeze information available to other carriers. We continue to believe that, in light of our preferred carrier freeze solicitation requirements, subscribers should know whether there are preferred carrier freezes in place on their carrier selections. As we noted in the *Section 258 Order*, if a subscriber is uncertain about whether a preferred carrier freeze has been imposed, the submitting carrier may use the three-way calling mechanism to confirm the

presence of a freeze. Carriers therefore would not need to rely on a LEC-prepared list identifying those subscribers who have freezes in place. Moreover, there is no indication, based on the record before us, that this information has been used in an anti-competitive manner, as AT&T suggests. If, in the future, we find that LECs are using this information for anti-competitive purposes, we will revisit this issue at that time.

### *B. Verification of Preferred Carrier Changes*

#### 1. Liability of an Executing Carrier

68. Several carriers ask the Commission to clarify that an executing carrier is liable for an unauthorized carrier change when the carrier improperly executes a carrier change request. Section 258 of the Act contemplates that the submitting carrier and/or the executing carrier could be liable for an unauthorized change in a subscriber's telecommunications service. In the *Section 258 Order*, we delineated the duties and obligations of submitting and executing carriers in order to minimize disputes over the source or cause of unauthorized carrier changes. Generally, we concluded that submitting carriers are responsible for submitting, without unreasonable delay, authorized and properly verified carrier change requests; while executing carriers are charged with executing promptly and without unreasonable delay changes that have been verified by the submitting carrier. We found that "where the submitting carrier submits a carrier change request that fails to comply with our rules and the executing carrier performs the change in accordance with the submission, only the submitting carrier is liable as an unauthorized carrier; [but] where the submitting carrier submits a change request that conforms with our rules and the executing carrier *fails to perform* the change in conformance with the submission, \* \* \* the executing carrier is liable. \* \* \*" Thus, an executing carrier that fails to execute promptly and without unreasonable delay a change request that has been properly submitted and verified is in violation of Section 258 of the Act and § 64.1100(b) of our rules and may be subject to liability for damages.

#### 2. Separate Authorizations for Multiple Services

69. We affirm our decision to require separate authorization for each service for which a subscriber requests a carrier change and/or freeze. Excel has not

presented any new arguments or credible evidence that would cause us to conclude our original decision was in error.

70. We also clarify that the separate authorization requirement does not prohibit carriers from obtaining a customer's authorization to change more than one service on the same LOA. Section 64.1130(d) of our rules allows carriers to use these "combined check-LOAs," as long as they comply with all the requirements governing Letters of Agency in § 64.1130. Thus, a carrier may use one combined check-LOA to obtain authorization for more than one service. It must be clear to the subscriber, however, that he or she will be receiving each service listed on the combined check-LOA from the same carrier.

### *C. Rules Governing LOAs*

#### 1. Limitation on the Effectiveness of an LOA

71. We will not adopt a 30-day limit on the effectiveness of an LOA as suggested by petitioner SBC. We believe a more reasonable limitation on the amount of time an LOA should be considered valid is 60 days, and we hereby adopt this 60-day limit. We further conclude that the 60-day limit shall apply to submitting carriers rather than executing carriers, because submitting carriers are actually parties to the contractual agreement with the customer and, as such, are more capable of conforming their behavior to the obligation.

72. Although we recognize that a LEC may be able to lift a freeze in as few as 24 or 48 hours, there are several factors to consider in determining the time period that an LOA should be considered valid. For example, if a carrier change request is rejected because the subscriber has not lifted the freeze on his or her account, the carrier must contact the subscriber and give him or her the opportunity to lift the freeze via a three-way call to the LEC. The subscriber may, however, be out of town or otherwise unable to be reached immediately. In either case, the carrier will be forced to continue to hold the LOA indefinitely or until the subscriber can be contacted. A 60-day limitation permits more flexibility under these and other, similar circumstances. We emphasize that this 60-day limitation represents the maximum time period for which an LOA will be considered valid. We note that consumers expect that their expressed preference for a new carrier will be honored within a reasonable time frame, and we think that a 60-day period sets a reasonable

outer limit. In addition, a time period exceeding 60 days may cause confusion for customers regarding requests they may have made concerning their account but no longer remember. We encourage carriers to submit a change order immediately after the subscriber authorizes the change to minimize the risk that the subscriber will have forgotten the change.

#### 2. Contents of LOA Regarding Preferred Carrier Change Charge

73. Under § 64.1130(e)(5) of our rules, LOAs are required to include a statement "[t]hat the subscriber understands that any preferred carrier selection the subscriber chooses may involve a charge to the subscriber for changing the subscriber's preferred carrier." In its petition, MediaOne explains that this requirement, which initially applied only to changes of a subscriber's long distance provider, can now be read to apply to changes of local service providers. Because preferred carrier change charges do not apply when a subscriber changes from one local service provider to another, MediaOne argues that the requirement set forth in Section 64.1130(e) will result in consumer confusion. Accordingly, MediaOne asserts that this rule should be revised to provide that this statement is not required in LOAs authorizing changes of local service providers.

74. We will revise our requirements for the content of LOAs. Our current rules state that an LOA must indicate to the subscriber that a charge "may" be assessed for any preferred carrier change. We agree with MediaOne that § 64.1130(e)(5) of our rules, as written, may result in consumer confusion to the extent there is no preferred carrier change charge applied for a change in local service providers. To alleviate consumer confusion, we therefore amend § 64.1130(e)(5) to provide that an LOA must contain language giving a subscriber the option of consulting with the carrier as to whether a fee applies to his or her preferred carrier change.

### *D. Payment of Preferred Carrier Change Charges After Slam*

75. There are two preferred carrier change charges that can be involved in a slam. The first charge is assessed when the LEC executes the slamming carrier's preferred carrier change order. The second charge is assessed when the LEC returns the subscriber to his or her authorized carrier. SBC seeks clarification as to whether, under the new slamming procedures, the unauthorized carrier is responsible for paying the carrier change charge when

the subscriber is returned to his or her authorized carrier. SBC also requests clarification that, when a slam has been alleged, the LEC, acting as executing carrier, is no longer obligated to investigate or make a determination as to the validity of the initial carrier change.

76. We have previously stated that where an IXC submits a request that is disputed by a subscriber and the IXC is unable to produce verification of that subscriber's change request, the LEC must assess the applicable change charge against that IXC. We also stated in the *Section 258 Order* that the unauthorized carrier must pay for the expenses of restoring the subscriber to his or her authorized carrier. We continue to believe that an unscrupulous carrier should bear full financial responsibility for the costs of its unlawful actions. Accordingly, we hereby clarify that the unauthorized carrier shall pay the preferred carrier change charges that are assessed in the event of a slam, *i.e.*, the charge assessed when the LEC executes the slamming carrier's preferred carrier change order and the charge assessed when the LEC returns the subscriber to his or her authorized carrier. Unauthorized carriers also are responsible for reimbursing authorized carriers in accordance with the requirements set forth in Section 258 of the Act and § 64.1170 of our rules.

77. We note that SBC's second clarification request regarding the executing carrier's role in investigating slamming allegations was made in response to the Commission's prior liability rules, which were superseded by the liability rules adopted in the *First Reconsideration Order*. The procedures we adopted in the *First Reconsideration Order* provide that "disputes between alleged slamming carriers, authorized carriers, and subscribers now will be brought before an appropriate state commission, or this Commission in cases where the state has not elected to administer these rules, rather than to the authorized carriers, as adopted in the *Section 258 Order*." Under these procedures, carriers must inform subscribers who believe that they have been slammed of their right to file a complaint with the appropriate governmental entity. We have not, however, restricted the ability of carriers to try to satisfy subscribers who alleged they have been slammed. For example, an IXC might authorize a LEC to fix alleged slams on a no-fault basis or to investigate the validity of the carrier changes. Nothing in the *First Reconsideration Order* precludes carriers from attempting to resolve

slamming allegations, either directly or through contractual arrangement with another carrier, before the subscribers have filed complaints, and, indeed, we anticipate that carriers will have incentives to continue such practices.

#### *E. Preemption of State Regulations*

78. Excel and RCN argue in their petitions that the Commission should reconsider its decision not to preempt state regulations regarding slamming because they believe that "the costs to carriers to comply with a patchwork of inconsistent federal and state regulations could be exorbitant, while accruing little benefit to consumers." Although we recognize that it may be simpler for carriers to comply with one set of verification rules, we will not interfere with the states' ability to adopt more stringent regulations. As we observed in both the *Section 258 Order* and the *First Reconsideration Order*, the Commission must work hand-in-hand with the states towards the common goal of eliminating slamming. States have valuable insight into the slamming problems experienced by consumers in their respective locales and can share their expertise with this Commission. We will not thwart that effort by requiring states to limit their verification requirements so that they are no more stringent than those promulgated by this Commission. The carriers challenging the Commission's decision to refrain from preempting state regulations have failed to identify a particular state law that should be preempted and how that state law conflicts with federal law or obstructs federal objectives. In the absence of such evidence, we will not preempt state regulations governing verification procedures for preferred carrier change requests.

#### **A. Procedural Matters**

##### *A. Final Regulatory Flexibility Analysis*

89. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *FNPRM* in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM*, including comment on the IRFA. The comments received are discussed below. The instant Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

##### 1. Need For and Objectives of This Action

90. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider

of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." In the *Section 258 Order*, the Commission established a comprehensive framework of rules to implement Section 258 and strengthen its existing anti-slamming rules. Concurrent with the release of the *Section 258 Order*, the Commission issued a *FNPRM* seeking comment on a number of additional proposals to further improve the preferred carrier change process and to prevent unauthorized carrier changes. In the instant *Order*, the Commission adopts some of the proposals set forth in the *FNPRM*. Specifically, the Commission: (1) amends the current carrier change authorization and verification rules to expressly permit the use of Internet Letters of Agency (Internet LOAs) in a manner consistent with the new E-Sign Act; (2) directs the North American Numbering Plan Administration (NANPA) to eliminate the requirement that carriers purchase Feature Group D access in order to obtain a carrier identification code (CIC); (3) provides further guidance on the independent third party verification process; (4) defines the term "subscriber" for purposes of its slamming rules; (5) requires carriers providing telephone exchange and/or telephone toll service to submit a semiannual report on the number of slamming complaints it receives; and (6) expands the existing registration requirement on carriers providing interstate telecommunications service to include additional facts that will assist the Commission's enforcement efforts. The objectives of the modified rules adopted in this *Order* are to implement Section 258 by improving the preferred carrier change process and strengthening the Commission's framework of anti-slamming rules.

##### 2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

91. The Commission received no comments directly in response to the IRFA.

92. *Resellers and CICs*. Relying in part on the small size of many resellers, opponents of the Commission's proposal to require switchless resellers to use their own CICs argue that such a requirement would create a substantial market entry barrier for resellers. Others maintain that CIC deployment costs would be manageable for resellers because they typically operate on a regional rather than on a national basis, that such costs may be viewed as "a

legitimate cost of doing business,” and that the independent use of CICs has significant competitive advantages for switchless resellers. These comments are discussed in more detail in paragraph 27 above.

93. *Submission of Reports by Carriers.* Commenters contend that requiring each carrier to submit reports on the number of slamming complaints that it receives would create serious burdens for the Commission and compliant carriers alike. We do not believe that the reporting requirement adopted in this Order will impose significant additional costs or administrative burdens on carriers. Several carriers indicated that they already track slamming complaints received from subscribers. Thus, we do not believe that we are requiring carriers to keep information that they would not otherwise already keep. Moreover, this requirement will enable the Commission to identify the carriers who repeatedly initiate unauthorized changes. In addition, carriers may be compelled to reduce slamming on their own because the reports will be available for public inspection.

94. *Registration Requirement.* Commenters argue that the proposed registration requirement would impose unnecessary costs on carriers and would do little to alleviate the slamming problem. We believe that all carriers providing interstate telecommunications should be able to comply with the registration requirement adopted herein without much expense or difficulty because the information requested is readily available, and to a large degree, must be provided to the states. We have minimized the burden that this requirement may have on carriers by making the registration information part of an existing form that must be completed and submitted for other obligations. We believe this requirement will benefit consumers by enhancing our ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming.

### 3. Description and Estimate of the Number of Small Entities To Which This Action Will Apply

95. 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 RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” “small governmental jurisdiction,” 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 Small Business Administration (SBA). A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 1992, there were approximately 275,801 small organizations. “Small governmental jurisdiction” generally means “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.” As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96 percent) are small entities. According to SBA reporting data, there were 4.44 million small business firms nationwide in 1992. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the proposed rules, if adopted.

96. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be data the Commission publishes in its *Trends in Telephone Service report*. In a recent news release, the Commission indicated that there are 4,144 interstate carriers. These carriers include, *inter alia*, local exchange carriers, wireline carriers and service providers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, providers of telephone service, providers of telephone exchange service, and resellers.

97. The SBA has defined establishments engaged in providing “Radiotelephone Communications” and “Telephone Communications, Except Radiotelephone” to be small businesses when they have no more than 1,500 employees. Below, we discuss the total estimated number of telephone companies falling within the two categories and the number of small businesses in each, and we then attempt to refine further those estimates to correspond with the categories of telephone companies that are commonly used under our rules.

98. We have included small incumbent 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 incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent 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.

99. *Total Number of Telephone Companies Affected.* The U.S. Bureau of the Census (“Census Bureau”) reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, covered specialized mobile radio providers, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities because they are not “independently owned and operated.” For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It is reasonable to conclude that 3,497 or fewer telephone service firms are small entity telephone service firms that may be affected by the new rules.

100. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies except radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992. According to the SBA’s definition, a small business telephone company other than a radiotelephone company is one employing no more than 1,500 persons. All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. We do

not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 2,295 or fewer small telephone communications companies other than radiotelephone companies are small entities that may be affected by the new rules.

101. Local Exchange Carriers. Neither the Commission nor the SBA has developed a definition for small providers of local exchange services (LECs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Telecommunications Industry Revenue* data, 1,348 incumbent carriers reported that they were engaged in the provision of local exchange services. We do 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 are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that 1,348 or fewer providers of local exchange service are small entities that may be affected by the new rules.

102. Interexchange Carriers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services (IXCs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 171 carriers reported that they were engaged in the provision of interexchange services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 171 or fewer small entity IXCs that may be affected by the new rules.

103. Competitive Access Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to competitive access services providers

(CAPs). The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 212 CAP/CLECs carriers and 10 other LECs reported that they were engaged in the provision of competitive local exchange services. We do not have data specifying the number of these carriers that are not independently owned and operated, or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 212 or fewer small entity CAPs and 10 other LECs that may be affected by the new rules.

104. Operator Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under the SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 24 carriers reported that they were engaged in the provision of operator services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of operator service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 24 or fewer small entity operator service providers that may be affected by the new rules.

105. Pay Telephone Operators. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 615 carriers reported that they were engaged in the provision of pay telephone services. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under the SBA's definition. Consequently, we estimate

that there are 615 or fewer small entity pay telephone operators that may be affected by the new rules.

106. Resellers (including debit card providers). Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable SBA definition for a reseller is a telephone communications company other than radiotelephone (wireless) companies. According to the most recent *Trends in Telephone Service* data, 388 toll and 54 local entities reported that they were engaged in the resale of telephone service. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 388 or fewer small toll entity resellers and 54 small local entity resellers that may be affected by the new rules.

107. Toll-Free 800 and 800-Like Service Subscribers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to 800 and 800-like service ("toll free") subscribers. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, and 877 numbers in use. According to our most recent data, at the end of January 1999, the number of 800 numbers assigned was 7,692,955; the number of 888 numbers that had been assigned was 7,706,393; and the number of 877 numbers assigned was 1,946,538. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 7,692,955 or fewer small entity 800 subscribers, 7,706,393 or fewer small entity 888 subscribers, and 1,946,538 or fewer small entity 877 subscribers may be affected by the new rules.

108. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone company

employing no more than 1,500 persons. According to the Census Bureau, only twelve radiotelephone firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. In addition, according to the most recent *Telecommunications Industry Revenue* data, 808 carriers reported that they were engaged in the provision of either cellular service or Personal Communications Service (PCS) services, which are placed together in the data. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 808 or fewer small cellular service carriers that may be affected by the new rules.

#### 4. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

109. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that might affect small entities.

110. Preferred Carrier Changes Using the Internet. The Commission amends its rules to expressly permit preferred carrier changes to be conducted electronically through the use of Internet Letters of Agency (LOAs). Internet LOAs must comply with all current Commission authorization and verification requirements (as modified), and consumers must have the option of using alternative authorization and verification methods. This action is consistent with the *E-Sign Act's* mandate that electronic signatures and transactions be treated the same as written ones, and will promote consumer convenience and competition by facilitating the use of the Internet for preferred carrier changes.

111. Resellers and CICs. The Commission directs the NANPA to eliminate the requirement that carriers purchase "Feature Group D access" to obtain CICs. This action will facilitate the assignment of CICs to switchless resellers and eliminate a financial and administrative obstacle to their independent use of CICs.

112. Independent Third Party Verification. The Commission retains the three-way conference call and confirms that automated systems may be used as independent third party verification methods, but requires that the carrier's sales representative drop off the call once the connection has been established between the subscriber and the third-party verifier. This action will ensure the independence of the third party verification process and prevent the carrier's sales representative from improperly influencing subscribers, without burdening the verification process. In addition, the Commission adopts minimum content requirements for third party verification to provide guidance as to what practices are necessary and acceptable, and confirms that automated verification systems that preserve the independence of the third party verification process may be used to verify carrier change requests.

113. Definition of "Subscriber." The Commission adopts a definition of the term "subscriber" for purposes of its slamming rules that will allow customers of record to authorize additional persons to make telecommunications decisions, while retaining control over who is authorized to make such decisions on their behalf. The adoption of this definition will benefit all carriers, including small carriers, by providing them with the flexibility to establish authorization procedures appropriate to their own and their customers' needs, consistent with the framework of the Commission's slamming rules.

114. Submission of Reports by Carriers. Each carrier providing telephone exchange and/or telephone toll service is required to submit to the Commission a semiannual report identifying the number of complaints involving unauthorized changes that it has received, the number that it has investigated and found to be valid, and the number, investigated or not, that it has chosen to resolve directly with consumers. The report also must include the number of slamming complaints involving local intrastate and interstate interexchange service, investigated or not, that the carrier has chosen to resolve directly with subscribers. Because most subscribers who are slammed by an IXC report the slam to their LEC, rather than the IXC, LECs should include in their reports the name of each entity against which slamming complaints were directed and the number of complaints involving unauthorized changes that have been lodged against each entity. These reporting requirements will enable the Commission to identify carriers who

repeatedly initiate unauthorized changes, and may induce carriers to reduce slamming on their own to avoid public embarrassment or loss of goodwill.

115. Registration Requirement. Each carrier is required to register with the Commission, and an affirmative duty is established on the part of a telecommunications carrier providing telecommunications service for resale to confirm that a reseller has registered with the Commission prior to providing that reseller with service. Specifically, the annually-filed Telecommunications Reporting Worksheet (FCC Form 499-A), which must be filed by all telecommunications carriers in April of each year, will be revised to include the following additional information that is targeted to assist the Commission's anti-slamming efforts: the carrier's business name(s) and primary address; the names and business addresses of the carrier's chief executive office, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company; the carrier's regulatory contact and/or designated agent for service of process; all names under which the carrier has conducted business in the past; and the state(s) in which the carrier provides telecommunications service. The new registration requirement will enable the Commission to monitor the entry of carriers into the interstate telecommunications market and any associated increases in slamming, enhance the Commission's ability to take appropriate enforcement action against carriers that have demonstrated a pattern or practice of slamming, and deter carrier providing telecommunications service for resale from offering service to unregistered resellers.

#### 5. Steps Taken to Minimize the Significant Economic Impact of This Action on Small Entities, and Significant Alternatives Considered

116. Resellers and CICs. The Commission requested comment in the *FNPRM* on three possible approaches to the problems arising from the shared use of CICs by switchless resellers and their underlying, facilities-based carriers. The Commission believes that its proposal to require resellers to obtain their own CICs holds promise as a direct and effective solution to the significant problems that arise from the shared use of CICs. Based on review of the record as a whole, however, including concerns raised by some commenters regarding the financial and competitive impact of a CIC requirement on

resellers, many of which are small entities, the Commission is not adopting a CIC requirement at this time. By directing that the Feature Group D requirement be eliminated, the Commission is taking a step that will facilitate the ability of resellers to obtain and use their own CICs, while allowing them to choose whether to do so based on their own competitive needs.

117. Submission of Reports by Carriers. The Commission has considered whether the reporting requirements adopted herein will impose significant additional costs or administrative burdens on carriers. The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on carriers. In this regard, the Commission notes the comments of several carriers that they already track slamming complaints received from subscribers, and reasons that it would be a reasonable business practice for all telecommunications carriers, including small carriers, to track slamming complaints they receive in the course of their business. Indeed, the Commission states that it would be surprised if carriers did not do this. Accordingly, the Commission concludes that it is not requiring carriers to keep information that they would not otherwise keep. Moreover, these modest reporting requirements will help the Commission to achieve important objectives: identifying carriers that repeatedly initiate unauthorized changes, and deterring carriers from slamming.

118. Registration Requirement. To minimize the administrative burden on carriers of the registration requirement adopted herein, the Commission makes the registration information part of an existing form that must be completed and submitted for other obligations. The Commission also observes that all carriers providing interstate telecommunications service, including small carriers providing such service, should be able to submit this information without much expense or difficulty because it is readily available, and to a large degree, must already be submitted in state jurisdictions.

#### 6. Report to Congress

119. The Commission will send a copy of the *Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Order*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Order* and FRFA (or summaries thereof)

also will be published in the **Federal Register**.

#### B. Supplemental Final Regulatory Flexibility Analysis

120. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 62 FR 43493, August 14, 1997, in this proceeding. The Commission sought written public comment on the proposals in the *FNPRM and Order*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the subsequent *Section 258 Order* in this proceeding. The Commission received a number of petitions for reconsideration in response to the *Section 258 Order*. The instant *Second Order on Reconsideration* addresses issues raised in those reconsideration petitions. This associated Supplemental Final Regulatory Flexibility Analysis (SFRFA) reflects revised or additional information to that contained in the FRFA. This SFRFA is thus limited to matters raised in response to the *Section 258 Order* and addressed in the instant *Second Order on Reconsideration*. This SFRFA conforms to the RFA.

#### 1. Need for and Objectives of this Action

121. Section 258 of the Act makes it unlawful for any telecommunications carrier "to submit or execute a change in a subscriber's selection of a provider of telephone exchange services or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." In the *Section 258 Order*, the Commission established a comprehensive framework of rules to implement section 258 and strengthen its existing anti-slamming rules. In this *Second Order on Reconsideration*, the Commission upholds its rules governing the submission of preferred carrier freeze orders, the handling of preferred carrier change requests and freeze orders in the same transaction, and the automated submission and administration of freeze orders and changes. In addition, the Commission reaffirms its decision not to preempt state regulations governing verification procedures for preferred carrier change requests that are consistent with the provisions of Section 258. Furthermore, the Commission declines to adopt a 30-day limit on the amount of time an LOA confirming a carrier change request should be considered valid and instead adopts a 60-day limit. Finally, the

Commission clarifies certain of its rules regarding the payment of preferred carrier change charges after a slam.

#### 2. Summary of Significant Issues Raised by Petitions in Response to the FRFA

122. The Commission received no comments directly in response to the previous FRFA concerning the issues addressed in this Order.

#### 3. Description and Estimate of the Number of Small Entities To Which This Action Will Apply

123. In the associated FRFA, *supra*, we have provided a detailed description of the pertinent small entities. Those entities include wireline carriers, local exchange carriers, interexchange carriers, competitive access providers, resellers, and wireless carriers. We hereby incorporate those detailed descriptions by reference.

#### 4. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

124. Administration of Preferred Carrier Freezes. The Commission clarifies that only subscribers may submit freeze requests to LECs. The Commission also clarifies that a subscriber may request a preferred carrier change and obtain a preferred carrier freeze in the same transaction. In addition, the Commission declines to prohibit LECs from requiring submitting carriers to use separate methods for lifting a preferred carrier freeze and submitting a carrier change request, or to require LECs to make subscriber freeze information available to other carriers.

125. Verification of Preferred Carrier Changes. The Commission clarifies that an executing carrier that fails to promptly execute a properly submitted and verified change request has violated Section 258 and the Commission's slamming rules. In addition, the Commission reaffirms its prior decision to require separate authorization for each service for which a subscriber requests a carrier change and/or freeze, and clarifies that the separate authorization requirement does not prohibit carriers from obtaining authorization to change more than one service in the same LOA.

126. Rules Governing Letters of Agency (LOAs). The Commission declines to adopt 30-day limit on the amount of time that an LOA confirming a carrier change request is considered valid, instead adopting a 60-day limit as a more reasonable limitation. The 60-day limit applies to submitting carriers only. To avoid customer confusion as to whether a preferred carrier change

charge applies for a change in local service providers, the Commission also amends its rules to provide that LOAs must contain language giving a subscriber the option of consulting with the carrier as to whether a fee applies to his or her preferred carrier change.

127. Payment of Preferred Carrier Change Charge After Slam. The Commission clarifies that the unauthorized carrier shall pay the preferred carrier change charge assessed when the LEC executes the slamming carrier's preferred carrier change order and the change charge assessed when the LEC returns the subscriber to his or her authorized carrier. The Commission also clarifies that slamming carriers are responsible for payment of all preferred carrier change charges associated with a slam, including both the charge assessed when the LEC executes the slamming carrier's preferred carrier change order and the charge assessed when the LEC returns the subscriber to his or her authorized carrier.

128. Preemption of State Regulations. The Commission reaffirms its decision in the *Section 258 Order* not to preempt state regulations regarding slamming.

#### 5. Steps Taken To Minimize the Significant Economic Impact of This Action on Small Entities, and Significant Alternatives Considered

129. The clarifications and minor modifications to the Commission's slamming rules made in this *Second Order on Reconsideration* will benefit all carriers, including small carriers, by providing certainty and guidance in the preferred carrier change process. For instance, the Commission declines to adopt a 30-day time limit on the amount of time that an LOA confirming a carrier change request is considered valid because it does not provide enough flexibility to submitting carriers. Instead, the Commission adopts a 60-day time limit as a reasonable time frame which will provide flexibility but will also avoid consumer confusion that may be produced by an indefinite period of validity. We expect that the 60-day time limit will have no significant economic impact.

#### 6. Report to Congress

130. The Commission will send a copy of the *Second Order on Reconsideration*, including this SFRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Second Order on Reconsideration*, including the SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the

*Second Order on Reconsideration* and SFRFA (or summaries thereof) also will be published in the **Federal Register**.

#### C. Paperwork Reduction Act

131. 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 will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act and will go into effect upon announcement in the **Federal Register** of OMB approval.

#### VI. Ordering Clauses

132. Pursuant to Sections 1, 4, 201–205, and 258 of the Communications Act of 1934, as amended, the policies, rules, and requirements set forth herein are adopted. It is further ordered that 47 CFR Part 64 is amended as set forth.

133. Pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, that the petitions for reconsideration or clarification filed by AT&T Corp., Excel Telecommunications, Inc., MediaOne Group, National Telephone Cooperative Association, RCN Telecom Services, Inc., Rural LECs, and SBC Communications, Inc. are granted in part and denied in part to the extent discussed.

134. The requirements contained herein not pertaining to new or modified reporting or recordkeeping requirements shall become effective April 2, 2001 except for §§ 64.1130(a) through (c), 64.1130(i), 64.1130(j), 64.1180, 64.1190(d)(2), 64.1190(d)(3), 64.1190(e), and 64.1195, which contain information collection requirements that have not yet been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

135. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Order, including the Final Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**William F. Caton,**  
Deputy Secretary.

#### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

#### PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

**Authority:** 47 U.S.C. 154, 47 U.S.C. 225, 47 U.S.C. 251(e)(1), 151, 154, 201, 202, 205, 218–220, 254, 302, 303, and 337 unless otherwise noted. Interpret or apply sections 201, 218, 225, 226, 227, 229, 332, 48 Stat. 1070, as amended. 47 U.S.C. 201–204, 208, 225, 226, 227, 229, 332, 501 and 503 unless otherwise noted.

2. Section 64.1100 is amended by adding paragraph (h) to read as follows:

#### § 64.1100 Definitions.

\* \* \* \* \*

(h) The term *subscriber* is any one of the following:

(1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill;

(2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or

(3) Any person contractually or otherwise lawfully authorized to represent such party.

3. Section 64.1120 is amended by revising paragraphs (c)(1), (c)(3), and by adding paragraph (d).

#### § 64.1120 Verification of orders for telecommunications service.

\* \* \* \* \*

(c) \* \* \*

(1) The telecommunications carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1130; or

\* \* \* \* \*

(3) An appropriately qualified independent third party has obtained, in accordance with the procedures set forth in paragraphs (c)(3)(i) through (c)(3)(iv) of this section, the subscriber's oral authorization to submit the preferred carrier change order that confirms and includes appropriate verification data (e.g., the subscriber's date of birth or social security number). The independent third party must not be owned, managed, controlled, or directed by the carrier or the carrier's marketing agent; must not have any

financial incentive to confirm preferred carrier change orders for the carrier or the carrier's marketing agent; and must operate in a location physically separate from the carrier or the carrier's marketing agent.

(i) *Methods of third party verification.* Automated third party verification systems and three-way conference calls may be used for verification purposes so long as the requirements of paragraphs (c)(3)(ii) through (c)(3)(iv) of this section are satisfied.

(ii) *Carrier initiation of third party verification.* A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

(iii) *Requirements for content and format of third party verification.* All third party verification methods shall elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

(iv) *Other requirements for third party verification.* All third party verifications shall be conducted in the same language that was used in the underlying sales transaction and shall be recorded in their entirety. In accordance with the procedures set forth in 64.1120(a)(1)(ii), submitting carriers shall maintain and preserve audio records of verification of subscriber authorization for a minimum period of two years after obtaining such verification. Automated systems must provide consumers with an option to speak with a live person at any time during the call.

\* \* \* \* \*

(d) Telecommunications carriers must provide subscribers the option of using one of the authorization and verification procedures specified in § 64.1120(c) in addition to an electronically signed authorization and verification procedure under 64.1120(c)(1).

3. Section 64.1130 is amended by revising paragraphs (a), (b), (c), and (e)(4), and by adding paragraphs (i) and (j) to read as follows:

**§ 64.1130 Letter of Agency form and content.**

(a) A telecommunications carrier may use a written or electronically signed letter of agency to obtain authorization

and/or verification of a subscriber's request to change his or her preferred carrier selection. A letter of agency that does not conform with this section is invalid for purposes of this part.

(b) The letter of agency shall be a separate document (or an easily separable document) or located on a separate screen or webpage containing only the authorizing language described in paragraph (e) of this section having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. The letter of agency must be signed and dated by the subscriber to the telephone line(s) requesting the preferred carrier change.

(c) The letter of agency shall not be combined on the same document, screen, or webpage with inducements of any kind.

\* \* \* \* \*

(e) \* \* \*

(4) That the subscriber may consult with the carrier as to whether a fee will apply to the change in the subscriber's preferred carrier.

\* \* \* \* \*

(i) Letters of agency submitted with an electronically signed authorization must include the consumer disclosures required by Section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.

4. Add § 64.1180 to subpart K to read as follows:

**§ 64.1180 Reporting requirement.**

(a) *Applicability.* Each provider of telephone exchange and/or telephone toll service shall submit to the Commission via e-mail (*slamming478@fcc.gov*), U.S. Mail, or facsimile a slamming complaint report form identifying the number of slamming complaints received during the reporting period and other information as specified in paragraph (b) of this section.

(b) *Contents of report.* The report shall contain the following information:

(1) The information specified in paragraph (a) of this section;

(2) The number of slamming complaints received during the reporting period that the carrier has investigated and found to be valid.

(3) The number of slamming complaints received during the reporting period, investigated or not, that the carrier has directly resolved with consumers;

(4) If the reporting carrier is a wireline or fixed wireless local exchange carrier

providing service to end user subscribers, the name of each entity against which the slamming complaints received during the reporting period were directed;

(5) If the reporting carrier is a wireline or fixed wireless local exchange carrier providing service to end user subscribers, the number of slamming complaints received during the reporting period that were lodged against each entity identified in paragraph (b)(4) of this section; and

(6) The total number of subscribers the reporting carrier is serving at the end of the relevant reporting period.

(c) *Semiannual reporting requirement.* Reporting shall commence on August 15, 2001, covering the effective date of this requirement, as announced in the **Federal Register**, through June 30, 2001. Reports filed on February 15, 2002 shall cover the period between July 1, 2001 and December 31, 2001. Thereafter, carriers subject to the reporting requirement pursuant to paragraph (a) of this section shall submit semiannual slamming complaint reports on August 15 (covering January 1 through June 30) and on February 15 (covering July 1 through December 31).

5. Section 64.1190 is amended by revising paragraphs (d)(1)(ii), (d)(2)(i), (d)(3)(i), and (e)(1) to read as follows:

**§ 64.1190 Preferred carrier freezes.**

\* \* \* \* \*

(d) \* \* \*

(1) \* \* \*

(ii) A description of the specific procedures necessary to lift a preferred carrier freeze; an explanation that these steps are in addition to the Commission's verification rules in §§ 64.1120 and 64.1130 for changing a subscriber's preferred carrier selections; and an explanation that the subscriber will be unable to make a change in carrier selection unless he or she lifts the freeze.

\* \* \* \* \*

(2) \* \* \*

(i) The local exchange carrier has obtained the subscriber's written or electronically signed authorization in a form that meets the requirements of § 64.1190(d)(3); or

\* \* \* \* \*

(3) \* \* \*

(i) The written authorization shall comply with §§ 64.1130(b), (c), and (h) of the Commission's rules concerning the form and content for letters of agency.

\* \* \* \* \*

(e) \* \* \*

(1) A local exchange carrier administering a preferred carrier freeze

must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and

\* \* \* \* \*

6. Add § 64.1195 to Subpart K to read as follows:

**§ 64.1195 Registration requirement.**

(a) *Applicability.* A telecommunications carrier that will provide interstate telecommunications service shall file the registration information described in paragraph (b) of this section in accordance with the procedures described in paragraphs (c) and (g) of this section. Any telecommunications carrier already providing interstate telecommunications service on the effective date of these rules shall submit the relevant portion of its FCC Form 499-A in accordance with paragraphs (b) and (c) of this section.

(b) *Information required for purposes of part 64.* A telecommunications carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall provide the following information:

(1) The carrier's business name(s) and primary address;

(2) The names and business addresses of the carrier's chief executive officer, chairman, and president, or, in the event that a company does not have such executives, three similarly senior-level officials of the company;

(3) The carrier's regulatory contact and/or designated agent;

(4) All names that the carrier has used in the past; and

(5) The state(s) in which the carrier provides telecommunications service.

(c) *Submission of registration.* A carrier that is subject to the registration requirement pursuant to paragraph (a) of this section shall submit the information described in paragraph (b) of this section in accordance with the Instructions to FCC Form 499-A. FCC Form 499-A must be submitted under oath and penalty of perjury.

(d) *Rejection of registration.* The Commission may reject or suspend a carrier's registration for any of the reasons identified in paragraphs (e) or (f) of this section.

(e) *Revocation or suspension of operating authority.* After notice and opportunity to respond, the Commission may revoke or suspend the authorization of a carrier to provide service if the carrier provides materially false or incomplete information in its FCC Form 499-A or otherwise fails to comply with paragraphs (a), (b), and (c) of this section.

(f) *Imposition of fine.* After notice and opportunity to respond, the Commission may impose a fine on a carrier that is subject to the registration requirement pursuant to paragraph (a) of this section if that carrier fails to submit an FCC Form 499-A in accordance with paragraphs (a), (b), and (c) of this section.

(g) *Changes in information.* A carrier must notify the Commission of any changes to the information provided pursuant to paragraph (b) of this section within no more than one week of the change. Carriers may satisfy this requirement by filing the relevant portion of FCC Form 499-A in accordance with the Instructions to such form.

(h) *Duty to confirm registration of other carriers.* The Commission shall make available to the public a comprehensive listing of registrants and the information that they have provided pursuant to paragraph (b) of this section. A telecommunications carrier providing telecommunications service for resale shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, reseller) that is subject to the registration requirement pursuant to paragraph (a) of this section has filed an FCC Form 499-A with the Commission prior to offering service to that carrier-customer. After notice and opportunity to respond, the Commission may impose a fine on a carrier for failure to confirm the registration status of a potential carrier-customer before providing that carrier-customer with service.

[FR Doc. 01-4794 Filed 2-28-01; 8:45 am]

BILLING CODE 6712-01-U

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 01-487, MM Docket No. 00-235, RM-9992]

**Digital Television Broadcast Service; Lead, SD**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Duhamel Broadcasting Enterprises, licensee of station KHSDTV, substitutes DTV 10 for DTV 30 at Lead, South Dakota. See 65 FR 71079, November 29, 2000. DTV channel 10 can be allotted to Lead in compliance with the principle community coverage requirements of section 73.625(a) at reference

coordinates (44-19-36 N. and 103-50-12 W.) with a power of 34.8, HAAT of 576 meters and with a DTV service population of 146 thousand.

**DATES:** Effective April 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-235, adopted February 23, 2001, and released February 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**73.622 [Amended]**

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota, is amended by removing DTV channel 30 and adding DTV channel 10 at Lead.

Federal Communications Commission.

**Barbara A. Kreisman,**  
Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 01-4915 Filed 2-28-01; 8:45 am]

BILLING CODE 6712-01-P

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 01-488, MM Docket No. 00-236, RM-10000]

**Digital Television Broadcast Service; La Crosse, WI**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of QueenB Television, LLC,

licensee of station WKBT-TV, substitutes DTV channel 41 for DTV channel 53 at La Crosse, Wisconsin. *See* 65 FR 71291, November 30, 2000. DTV channel 41 can be allotted to La Crosse in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (44-05-28 N. and 91-20-16 W.) with a power of 1000, HAAT of 446 meters and with a DTV service population of 649 thousand.

**DATES:** Effective April 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-236, adopted February 23, 2001, and released February 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Wisconsin, is amended by removing DTV channel 53 and adding DTV channel 41 at La Crosse.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-4914 Filed 2-28-01; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-486, MM Docket No. 00-188, RM-9969]

#### Digital Television Broadcast Service; New Orleans, LA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of WWL-TV, Inc., licensee of station WWL-TV, substitutes DTV channel 36 for DTV channel 30 at New Orleans, Louisiana. *See* 65 FR 60163, October 10, 2000. DTV channel 36 can be allotted to New Orleans in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates (29-54-23 N. and 90-02-23 W.) with a power of 1000, HAAT of 305 meters and with a DTV service population of 1712 thousand.

**DATES:** Effective April 12, 2001.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-188, adopted February 23, 2001, and released February 26, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

#### List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

#### § 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Louisiana, is amended by removing DTV channel 30 and adding DTV channel 36 at New Orleans.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-4913 Filed 2-28-01; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-419; MM Docket No. 00-237; RM-10006]

#### Radio Broadcasting Services; Window Rock, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 285C2 for Channel 274C3 at Window Rock, Arizona, and modifies the license of Station KWIM accordingly, as requested by Western Indian Ministries, Inc. *See* 65 FR 71080, November 29, 2000. Coordinates used for Channel 285C2 at Window Rock are those of the presently licensed site of Station KWIM, at 35-39-19 NL and 109-01-59 WL.

**DATES:** Effective April 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-237, adopted February 7, 2001, and released February 16, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 274C3 and adding Channel 285C2 at Window Rock.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-4918 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-P**

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**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Part 73**

[DA 01-402, MM Docket No. 00-215; RM-9994]

**Radio Broadcasting Services; Aspen, CO**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition filed by Roaring Forks Broadcasting, Inc., requesting the allotment of Channel 228A at Aspen, Colorado, as the community's third local FM transmission service. See 65 FR 67691 (November 13, 2000). Channel 228A can be allotted at Aspen, Colorado, at coordinates 39-11-24 NL and 106-49-06 WL, consistent with the minimum distance separation requirements of Section 73.207(b) and the principal community coverage requirements of Section 73.315(a) of the Commission's Rules without a site restriction.

**DATES:** Effective April 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Victoria M. McCauley, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-215 adopted February 7, 2001, and released February 16, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b) the FM Table of Allotments under Colorado is amended by adding Channel 228A at Aspen.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-4911 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-U**

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**FEDERAL COMMUNICATIONS COMMISSION**
**47 CFR Part 73**

[DA 01-400; Docket No. 00-16, RM-9805; MM Docket No. 00-146, RM-9937; MM Docket No. 00-147; RM-9938; MM Docket No. 00-212; RM-9988; MM Docket No. 00-213; RM-9989; MM Docket No. 00-214; RM 9990]

**Radio Broadcasting Services; Burke, SD; Marietta, MS; Lake City, CO; Glenville, WV; Pigeon Forge, TN; and Lincolnton, GA**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document grants six proposals that allot new channels to Burke, South Dakota; Marietta, Mississippi; Lake City, Colorado; Glenville, West Virginia; Pigeon Forge, Tennessee; Lincolnton, Georgia. See Supplementary Information, *infra*.

**DATES:** Effective April 2, 2001. Filing windows for these allotments will not be opened at this time. Instead, the issue of opening these allotments for auction will be addressed by the Commission in a subsequent Order.

**FOR FURTHER INFORMATION CONTACT:** Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 00-16; MM Docket No. 00-146; and MM Docket No. 00-147; MM Docket No. 00-212; MM Docket No. 00-213; and MM Docket No. 00-214, adopted February 7, 2001, and released February 16, 2001. 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission, at the request of NationWide Radio Stations, allots Channel 264A at Burke, South Dakota, as the community's first local aural transmission service. See 65 FR 12155, March 8, 2000. Channel 264A can be allotted at Burke in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.5 kilometers (2.2 miles) east to avoid a short-spacing to the vacant allotment site for Channel 264A, Mission, South Dakota. The coordinates for Channel 264A at Burke are 43-11-06 North Latitude and 99-15-02 West Longitude.

The Commission, at the request of Robert Sanders, allots Channel 250A at Marietta, Mississippi, as the community's first local aural transmission service. See 65 FR 53689, September 5, 2000. Channel 250A can be allotted to Marietta in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.3 kilometers (0.8 miles) east to avoid short-spacings to the licensed sites of Station WWMS(FM), Channel 248C1, Oxford, Mississippi, Station WKGL(FM), Channel 249A, Russellville, Alabama, and Station WZLQ(FM), Channel 253C1, Tupelo, Mississippi. The coordinates for Channel 250A at Marietta are 34-30-20 North Latitude and 88-27-18 West Longitude.

The Commission, at the request of The Parker Radio Project, allots Channel 247A at Lake City, Colorado as the community's first local aural transmission service. See 65 FR 53689, September 5, 2000. Channel 247A can be allotted at Lake City in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 247A are 38-01-47 North Latitude and 107-18-52 West Longitude.

The Commission, at the request of Donald Staats d/b/a Media Staats, allots Channel 299A at Glenville, West Virginia, as the community's first local aural transmission service. See 65 FR 67691, November 13, 2000. Channel 299A can be allotted at Glenville in compliance with the Commission's minimum distance separation

requirements with a site restriction 1.0 kilometers (0.6 miles) southwest to avoid a short-spacing to the licensed site of Station WFSP-FM, Channel 299A, Kingwood, West Virginia. The coordinates for Channel 299A at Glenville are 38-55-43 North Latitude and 80-50-47 West Longitude.

The Commission, at the request of Bernice P. Hedrick, allots Channel 292A at Pigeon Forge, Tennessee, as the community's first local aural transmission service. See 65 FR 67691, November 13, 2000. Channel 292A can be allotted at Pigeon Forge in compliance with the Commission's minimum distance separation requirements with a site restriction 7.5 kilometers (4.7 miles) southeast to avoid a short-spacing to the licensed site of Station WRIL-FM, Channel 292A, Pineville, Kentucky. The coordinates for Channel 292A at Pigeon Forge are 33-43-33 North Latitude and 83-31-18 West Longitude.

The Commission, at the request of H. David Hedrick, allots Channel 254A at Lincolnton, Georgia, as the community's first local aural transmission service. See 65 FR 67691, November 13, 2000. Channel 254A can be allotted at Lincolnton in compliance with the Commission's minimum distance separation requirements with a site restriction of 13 kilometers (8.1 miles) south to avoid a short-spacing to the licensed site of Station WSPA-FM, Channel 255C, Spartanburg, South Carolina. The coordinates for Channel 254A at Lincolnton are 33-40-37 North Latitude and 82-30-18 West Longitude.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Lake City, Channel 247A.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Lincolnton, Channel 254A.

4. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Marietta, Channel 250A.

5. Section 73.202(b), the Table of FM Allotments under South Dakota, is

amended by adding Burke, Channel 264A.

6. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by adding Pigeon Forge, Channel 292A.

7. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Glenville, Channel 299A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-4910 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-U**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[MM Docket Nos. 94-150, 92-51, and 87-154]

##### Attribution Rules; Correction

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Communications Commission published in the **Federal Register** of February 13, 2001 (66 FR 9962), a document revising rules governing attribution of ownership interests. This document contains a correction to those rules.

**DATES:** Effective April 16, 2001.

**FOR FURTHER INFORMATION CONTACT:** Cyndi Thomas, 202-418-2120.

**SUPPLEMENTARY INFORMATION:** The Federal Communications Commission published a document amending parts 21, 73, and 76 in the **Federal Register** of February 13, 2001 (66 FR 9962). This document corrects the **Federal Register** as it appeared. In rule FR Doc. 01-3175 published on February 13, 2001 (66 FR 9962), the Commission is correcting § 73.3615 of the Commission's rules to reflect an amendment to § 73.3615(a)(3)(iv)(B), rather than § 73.3615(a)(3)(iii)(B). In rule FR Doc. 01-3175 published on February 13, 2001, make the following corrections:

##### § 73.3615 [Corrected]

1. On page 9973, in the first column, in amendatory instruction 6, in the third line, "paragraph (a)(3)(iii)(B)" is corrected to read "paragraph (a)(3)(iv)(B)".

2. On page 9973, in the first column, in § 73.3615, correct paragraph designation "(iii)" to read "(iv)".

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 01-4795 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-P**

#### ENVIRONMENTAL PROTECTION AGENCY

##### 48 CFR Part 1516

[FRL-6932-7]

##### Acquisition Regulation: Type of Contracts

**AGENCY:** Environmental Protection Agency.

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

**SUMMARY:** The Environmental Protection Agency (EPA) is amending the EPA Acquisition Regulation (EPAAR) to provide for the use, in certain circumstances and under certain conditions, of a letter contract known as a Notice to Proceed (NTP), to carry out emergency response actions as authorized under sections 104(a)(1) and (h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986; sections 311 (c)(2) and (e)(1)(B) of the Clean Water Act, as amended by the Oil Pollution Act of 1990; and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

**DATES:** This interim rule is effective on March 1, 2001. Interested parties should submit comments on this interim rule not later than April 30, 2001 to be considered in the formulation of the final rule.

**ADDRESSES:** Please submit written comments to Larry Wyborski at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Ave, N.W., Ariel Rios Building, Washington, D.C. 20460. Commenters may submit comments and data electronically by sending electronic mail (e-mail) to:

*Wyborski.Larry@epamail.epa.gov*. You must submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. You may also submit disks in Corel Word Perfect format or ASCII file format. Do not submit confidential business information through e-mail. You may also file electronic comments on line at Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** Larry Wyborski, U.S. Environmental

Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Avenue, N.W., Ariel Rios Building, Washington, D.C. 20460. Telephone: (202) 564-4369.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This interim rule amends EPAAR Subpart 1516.6 to provide for issuance, by an EPA Federal Classification Series (FCS) 1102 contracting officer or duly authorized EPA on-scene coordinator with a delegation of procurement authority, of a letter contract known as a Notice to Proceed to undertake certain emergency response actions as authorized under, and consistent with, CERCLA sections 104 (a)(1) and (h) (42 U.S.C. 9604(a)(1) and (h)), sections 311 (c)(2) and (e)(1)(B) of the Clean Water Act (33 U.S.C. 1321(c)(2) and (e)(1)(B)), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300)(1999). Under CERCLA section 104 (a)(1), the EPA (as delegated by the President under Executive Order 12580) is authorized to take certain response actions, consistent with the NCP, to protect the public health, welfare or the environment whenever any hazardous substance is released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. Similarly, pursuant to sections 311 (c)(2) and (e)(1)(B) of the Clean Water Act, the EPA (as delegated by the President under Executive Order 12777) is authorized to take certain actions if a discharge, or a substantial threat of a discharge (to or upon navigable waters, adjoining shorelines, the contiguous zone, or natural resources belonging to, appertaining to, or under the exclusive management of the United States) of oil or a hazardous substance from a vessel, offshore facility, or onshore facility is of such a nature as to be a substantial threat to the public health or welfare. In addition, CERCLA Section 104(h), 42 U.S.C. 9604(h), and Clean Water Act sections 311 (c)(2)(B) and (d), 33 U.S.C. 1321 (c)(2)(B) and (d), generally provide that procurement procedures may be developed to effectuate the purposes of these sections. Accordingly, this interim rule identifies the circumstances and conditions under which an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority may award an NTP to carry out the EPA's obligations under

CERCLA section 104(a)(1) and the Clean Water Act sections 311 (c)(2) and (e)(1)(B). In addition, the procedures provided for by this rule in EPAAR 1516.6 may also be used, as appropriate and authorized, for any actions that EPA may be directed to take by the Federal Emergency Management Agency under the authority of the Stafford Act, 42 U.S.C. 5121, *et seq.*

##### B. Executive Order 12866

This interim rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this interim rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

##### D. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's rule on small entities, small entity is defined as: (1) a small business that meets the definition of a small business found in the Small Business Act and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's interim rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of

the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Based on a review of EPA's historical experience, over the last three fiscal years EPA entered into only two letter contracts for the type of work contemplated by this interim rule, each of less than \$10,000.00. Consequently, because of the emergency nature of an NTP, and the strict conditions on its use, and based on its limited historical utilization, it is believed that the authority provided by this interim rule will be used on a very limited basis so that it will have little, if any, impact on small businesses. This interim rule, therefore, will have no adverse and no significant impact on small entities.

##### E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This interim rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

##### F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks.

#### G. Executive Order 13132

Executive Order 13132 entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This interim rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to

the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### I. National Technology Transfer and Advancement Act of 1995

EPA will use voluntary consensus standards, as directed by section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note), in its procurement activities. The NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This interim rulemaking does not involve technical standards. Therefore, EPA is not considering use of any voluntary consensus standards. EPA welcomes comments on this aspect of the interim rulemaking, and, specifically, invites the public to identify potentially applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

#### J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

#### K. Determination To Issue an Interim Rule

Under the Office of Federal Procurement Policy Act, 41 U.S.C. 418b, and Federal Acquisition Regulation (FAR) 1.501-3(b), a procurement regulation may take effect on a temporary basis prior to notice and comment when there are urgent and compelling circumstances that make compliance with prior notice and comment impracticable, the notice of the procurement regulation is published in the **Federal Register** and includes a statement that the procurement regulation is temporary pending completion of the public comment period, and provision is made for a public comment period of at least 30 days. For the reasons set forth below, a determination has been made by the authorized official that such conditions exist justifying the promulgation of this interim rule without prior opportunity for public comment. Pursuant to the Office of Federal Procurement Policy Act, 41 U.S.C. 418b(d), the EPA will consider public comments received in response to this interim rule in the formation of the final rule.

Immediate effectiveness of this interim rule is essential to ensure that the EPA, if necessary, will be able to obtain the services required to respond to certain environmental emergency situations as authorized by and consistent with CERCLA sections 104(a)(1) and (h) (42 U.S.C. 9604(a)(1) and (h)), the Clean Water Act sections 311(c)(2) and (e)(1)(B) (33 U.S.C. 1321(c)(2) and (e)(1)(B)), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300). Under these statutes and regulations, the EPA is authorized to take certain actions to protect the public health, welfare or the environment.

Although EPA has contracted on a competitive basis with a number of firms to provide emergency response cleanup services, certain types of emergencies may be so acute, and the threat to human health or the environment so severe, that cleanup actions must be commenced prior to the required response times of these contracts. Some examples of these types

of emergencies include: a train derailment in a remote area with leakage of highly toxic chemicals into the ground or nearby water source; an oil or hazardous chemical spill into a river, lake, or stream that may affect wildlife or the public health or welfare; and a fire or explosion at a petrochemical facility or a chemical distributors warehouse that may release toxic chemicals into the air, water, or land endangering the public and the environment. Furthermore, emerging threats that the EPA may be tasked to address include releases caused by terrorists/weapons of mass destruction, which are events which could threaten first responders, the public and the environment.

In such emergencies, the standard contract response time may be too long to wait to begin cleanup services or for some reason the contracted cleanup contractor may not be able to respond in time and no other alternate existing contractor is available. Consequently, the urgent and compelling circumstances attendant to this interim rule stem from the concern that unforeseen and unpredictable situations could materialize where existing contractual vehicles in place to deal with an emergency environmental problem are not capable, for any reason, to timely respond to the situation thereby exposing the public and the environment to the risk of harm or injury. Although the EPA does not anticipate many situations where the existing contractual coverage will be insufficient to timely and adequately respond to an environmental emergency demanding immediate attention, in order to fulfill its responsibilities to protect the public health, welfare and the environment, the Agency needs a contractual mechanism to obtain immediate services to respond to environmental releases, discharges or threats that cannot be adequately and timely addressed by existing contractual coverage.

The Agency therefore intends to use a letter contract called an NTP in those limited situations where the existing contractual coverage is not available in a timely manner to respond to certain environmental discharges, releases or threats as described in CERCLA section 104(a)(1) (42 U.S.C. 9604(a)(1)), Clean Water Act sections 311(c)(2) and (e)(1)(B) (33 U.S.C. 1321(c)(2) and (e)(1)(B)), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300). The use of the NTP letter contract will be governed by the applicable procedures mandated by the FAR and

the additional requirements set forth in this rule.

Accordingly, because of the urgent and compelling nature of this action, and the potential danger and damage that could materialize if there were no adequate contractual coverage available to timely respond to an environmental emergency, pursuant to 41 U.S.C. 418b(d) and FAR 1.501-3(b), EPA is promulgating this interim rule on a temporary basis and providing for a public comment period of 60 days from the date of publication of this interim rule. After considering the comments received, EPA may issue a final rule. In accordance with 41 U.S.C. 418b(d), this interim rule will be in effect on a temporary basis during the public comment period and while EPA considers any comments received.

Further, consistent with the urgent and compelling nature of this action, the Agency will execute a class Justification For Other Than Full And Open Competition as required by FAR 6.302-2 and 6.303-1(c) to allow for the award, under the conditions consistent with this rule, of an NTP letter contract on a non-competitive basis, and the EPA will also prepare and execute any additional determinations and/or deviations necessary to effectuate the purposes of this rule.

#### List of Subjects in 48 CFR Part 1516

Government procurement.

Therefore, 48 CFR chapter 15 is amended as set forth below:

1. The authority citation for part 1516 is to read as follows:

**Authority:** The provisions of this regulation are issued under 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c); and 41 U.S.C. 418b.

#### PART 1516—[AMENDED]

2. Sections 1516.603-1 and 1516.603-2 are added to read as follows:

##### 1516.603-1: What is a Notice to Proceed?

(a) A Notice to Proceed (NTP) is a type of letter contract issued pursuant to FAR 16.603 under which an EPA Federal Classification Series 1102 (FCS) contracting officer or a duly authorized EPA on-scene coordinator with delegated procurement authority may initiate, in certain defined situations and subject to certain limitations and conditions, contracting actions to respond to certain situations as described in CERCLA section 104(a)(1) (42 U.S.C. 9604(a)(1)) and the Clean Water Act sections 311(c)(2) and (e)(1)(B) (33 U.S.C. 1321(c)(2) and (e)(1)(B)). An NTP may be utilized as a contractual instrument for certain—

(1) Actions that EPA is authorized to undertake under CERCLA section 104(a)(1), 42 U.S.C. 9604(a)(1), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), to respond to situations where any hazardous substance has been released or there is a substantial threat of such a release into the environment, or there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, and

(2) Actions that EPA is authorized to undertake under sections 311(c)(2) and (e)(1)(B) of the Clean Water Act, 33 U.S.C. 1321(c)(2) and (e)(1)(B), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), to respond when there is a discharge, or a substantial threat of a discharge (to or upon navigable waters, adjoining shorelines, the contiguous zone, or natural resources belonging to, appertaining to, or under the exclusive management of the United States), of oil or a hazardous substance from a vessel, onshore facility, or offshore facility that is a substantial threat to the public health or welfare. Pursuant to a class Justification For Other Than Full and Open Competition executed under the authority of FAR 6.302-2 and 6.303-1(c), an NTP may be issued on a non-competitive basis.

(b) What do subsections 1516.603-1 and 1516.603-2 cover? EPAAR 1516.603-1 and 1516.603-2 contain information and procedures relating to issuance and definitization of an NTP. An NTP is subject to, and must comply with, the applicable requirements for letter contracts in FAR 16.603 and the requirements in this section, and be definitized by an EPA FCS 1102 contracting officer.

##### 1516.603-2 What are the requirements for use of an NTP?

(a) An EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority may issue an NTP so long as it does not exceed the limits of his or her procurement authority and only when all of the following conditions have been met:

(1) A written determination has been made by the Federal on-scene coordinator that—

(i) As authorized by and consistent with CERCLA section 104(a)(1), 42 U.S.C. 9604(a)(1), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), the EPA must take action to respond to a hazardous substance release or

substantial threat of such a release into the environment, or a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, or

(ii) As authorized by and consistent with the Clean Water Act sections 311(c)(2) and (e)(1)(B), 33 U.S.C. 1321(c)(2) and (e)(1)(B), and the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR part 300), the EPA must take action to respond to a discharge, or a substantial threat of a discharge (to or upon navigable waters, adjoining shorelines, the contiguous zone, or natural resources belonging to, appertaining to, or under the exclusive management of the United States), of oil or a hazardous substance from a vessel, offshore facility, or onshore facility that is of such a size and character as to pose a substantial threat to the public health or welfare of the United States; and

(2) Before a duly authorized EPA on-scene coordinator with a delegation of procurement authority may issue an NTP, he or she must confirm that an EPA FCS 1102 contracting officer is not available to provide the required contracting support by the time the Federal on-scene coordinator requires the response action to be undertaken; and

(3) A written determination is made by an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority that there is no other existing contracting mechanism available to provide the required contracting support by the time required, including the inability of an existing emergency response contractor or other existing contract vehicle to respond in the required time frame. These conditions, as well as any other requirements applicable to NTPs or letter contracts contained in the FAR or EPAAR, must be met before an NTP can be issued by an EPA FCS 1102 contracting officer or a duly authorized EPA on-scene coordinator with a delegation of procurement authority.

(b) What should be included in an NTP? (1) Since an NTP is a type of letter contract, it is subject to the requirements of FAR 16.603. All of the relevant requirements of FAR 16.603 apply to NTP's including FAR 16.603-2, 16.603-3, and 16.603-4, and an NTP will include all appropriate FAR and EPAAR contract clauses. An NTP should also include an overall price ceiling and be as complete and definite as possible under the circumstances. To the extent NTPs require modification of

any FAR or EPAAR prescribed procedures or clauses, an appropriate FAR or EPAAR deviation will be prepared.

(2) The EPA FCS 1102 contracting officer or duly authorized EPA on-scene coordinator with a delegation of procurement authority shall include in each NTP the clauses required by the FAR or EPAAR for the type of definitive contract contemplated and any additional clauses known to be appropriate for it. In addition, the following clauses must be inserted in the solicitation (if one is issued) and the NTP when an NTP is used:

(i) The clause at FAR 52.216-23, Execution and Commencement of Work, except that the term on-scene coordinator may be used in place of the term contracting officer;

(ii) The clause at FAR 52.216-24, Limitation of Government Liability, with dollar amounts completed in a manner consistent with FAR 16.603-2(d); and

(iii) The clause at FAR 52.216-25, Contract Definitization, with its paragraph (b) completed in a manner consistent with FAR 16.603-2(c) or any applicable FAR deviation. The clause at FAR 52.216-26, Payment of Allowable Costs Before Definitization, shall also be included in a solicitation (if one is issued) and NTPs if a cost-reimbursement definitive contract is contemplated.

(3) Each NTP shall, as required by the clause at FAR 52.216-25, Contract Definitization, contain a negotiated definitization schedule that includes:

(i) Dates for submission of the contractor's price proposal, required cost and pricing data, and if required, make-or-buy and subcontracting plans;

(ii) The date for the start of negotiations; and

(iii) A target date for definitization which shall be the earliest practicable date for definitization (an NTP must be definitized by an EPA FCS 1102 contracting officer). The schedule will provide for definitization of the NTP within 90 calendar days after the date of the NTP award. However, the EPA FCS 1102 contracting officer may, in extreme cases and according to agency procedures, authorize an additional period. If, after exhausting all reasonable efforts, the EPA FCS 1102 contracting officer and the contractor cannot negotiate a definitive contract because of failure to reach agreement as to price or fee, the clause at 52.216-25 requires the contractor to proceed with the work and provides that the contracting officer may, with the approval of the head of the contracting activity, determine a reasonable price or

fee in accordance with subpart 15.4 and part 31 of the FAR, subject to appeal as provided in the Disputes clause.

(4) The maximum liability of the Government inserted in the clause at 52.216-24, Limitation of Government Liability, shall, as approved by the official who authorized the NTP, be the estimated amount necessary to cover the contractor's requirements for funds to complete the work to be performed under the NTP. However, it shall not exceed the estimated cost of the definitive contract.

(c) Are there any financial or monetary limitations on the use of an NTP? In addition to the requirements for issuance of an NTP set forth elsewhere in this subpart—

(1) The total definitized dollar value of an individual NTP shall not exceed \$200,000.00, and

(2) The applicable Program Office must commit and make available appropriate funding for the emergency response action taken under the NTP prior to NTP issuance.

(d) Are there any other procedural requirements for issuance of an NTP? An NTP must be issued in writing by the EPA FCS 1102 contracting officer or the duly authorized EPA on-scene coordinator with a delegation of procurement authority using a Standard Form 33. In addition, the EPA FCS 1102 contracting officer or the EPA on-scene coordinator awarding the NTP must ensure that the NTP complies with all applicable requirements for letter contracts set forth in the FAR and the requirements of this section, includes all relevant provisions and clauses, and that all actual or potential conflict of interest or other contracting issues are identified and resolved prior to NTP issuance. To assist the EPA on-scene coordinator and EPA FCS 1102 contracting officer in their responsibilities regarding NTP award, an NTP checklist will be completed by the EPA FCS 1102 contracting officer or EPA on-scene coordinator prior to issuance of the NTP.

(e) What happens after an NTP is awarded to a contractor? (1) If an NTP is issued by a duly authorized EPA on-scene coordinator with a delegation of procurement authority, he or she must notify the cognizant EPA FCS 1102 contracting officer of the NTP award, and provide the NTP checklist to the contracting officer, as soon as possible but in no event later than the next working day after NTP issuance.

(2) Within 5 working days of the EPA on-scene coordinator's award of an NTP, the on-scene coordinator shall provide to the cognizant EPA FCS 1102 contracting officer all NTP documents,

materials, and information necessary for the contracting officer to definitize the contract, and should retain a copy for his/her records. An EPA FCS 1102 contracting officer will be responsible for definitization of the NTP consistent with the definitization procedures set forth in this subpart. During the process of definitizing the NTP, the EPA FCS 1102 contracting officer will send the contractor the "Representations, Certifications, and Other Statements of Offerors" for completion. The contractor will complete this information, and any other required information, and submit it to the EPA FCS 1102 contracting officer prior to definitization of the NTP.

(f) The CCO, who is authorized by EPAAR 1516.603-3 to make the determination to use a letter contract, shall make a class determination and findings authorizing EPA FCS 1102 contracting officers and duly authorized EPA on-scene coordinators with delegations of procurement authority to award NTPs pursuant to the conditions set forth in this subpart.

Dated: December 27, 2000.

**Judy S. Davis,**

*Acting Director, Office of Acquisition Management.*

[FR Doc. 01-4978 Filed 2-28-01; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 001121328-1041-02; I.D. 111500C]

RIN 0648-AN71

#### Fisheries of the Northeastern United States; Scup and Black Sea Bass Fisheries; 2001 Specifications; Commercial Quota Harvested for Winter I Scup Period; Commercial Quota Harvested for Black Sea Bass Quarter I Period

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

**ACTION:** Final rule, final 2001 specifications, and commercial quota adjustment; notification of commercial quota harvest for Winter I scup period; notification of commercial quota harvest for Quarter I black sea bass period.

**SUMMARY:** NMFS issues final specifications for the 2001 scup and black sea bass fisheries and makes preliminary adjustments to the 2001

commercial quotas for these fisheries. The annual specifications for the scup fishery modify the Gear Restricted Areas (GRAs) that were established in the Mid-Atlantic Bight to reduce scup bycatch in small-mesh fisheries. The trip limit provisions in the scup and black sea bass fisheries are modified to be possession limits, and these limits are further specified to be the maximum amount allowed to be landed within a 24-hour period (calendar day). NMFS also announces that the scup commercial quota available in the Winter I period and the black sea bass commercial quota available in the Quarter 1 period to the coastal states from Maine through North Carolina has been harvested. Federally permitted commercial vessels may not land scup in these states for the remainder of the 2001 Winter I quota period (through April 30, 2001). Federally permitted commercial vessels may not land black sea bass in these states for the remainder of the 2001 Quarter I quota period (through March 31, 2001). Regulations governing the scup and black sea bass fisheries require publication of this notification to advise the coastal states from Maine through North Carolina that these quotas have been harvested and to advise Federal vessel permit holders and Federal dealer permit holders that no commercial quota is available for landing scup in these states, and for landing black sea bass in these states north of 35°15.3' N. lat. The intent of this action is to comply with implementing regulations for the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP), which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of these fisheries. The specifications for the 2001 summer flounder fishery will be published in the **Federal Register** at a later date.

**DATES:** 1. The 2001 final specifications for scup and black sea bass are effective March 1, 2001, through December 31, 2001.

2. Sections 648.14(a)(84), 648.123(a)(1) and 648.123(a)(5) are effective March 1, 2001.

3. The prohibition on landings of scup in the coastal states from Maine through North Carolina by Federal permit holders is effective 0001 hours, March 1, 2001, through 2400 hours, April 30, 2001.

4. The prohibition on landings of black sea bass in the coastal states from Maine through North Carolina north of 35°15.3' N. lat. by Federal permit holders is effective 0001 hours, March 7,

2001, through 2400 hours, March 31, 2001.

5. Sections 648.14(a)(92), 648.14(a)(122), 648.14(u)(9), 648.120(b)(2), 648.122(a) through (c), 648.140(b)(2), the removal and reservation of 648.122(d), and the removal of 648.14(a)(123) are effective April 2, 2001.

**ADDRESSES:** Send comments on any ambiguity or unnecessary complexity arising from the language used in this final rule to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298.

Copies of supporting documents used by the Scup and Black Sea Bass Monitoring Committees, the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office at the same address. The EA/RIR/FRFA contains an analysis of the final scup and black sea bass measures and includes a draft analysis of summer flounder measures. The EA/RIR/FRFA is also accessible via the Internet at <http://www.nero.nmfs.gov/ro/doc/nr.htm>.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, (978)281-9279, fax (978)281-9135, e-mail [rick.a.pearson@noaa.gov](mailto:rick.a.pearson@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The FMP was developed jointly by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council) in consultation with the New England and South Atlantic Fishery Management Councils. The management units specified in the FMP include scup (*Stenotomus chrysops*) and black sea bass (*Centropristis striata*) in U.S. waters of the Atlantic Ocean from 35°13.3' N. lat. (the latitude of Cape Hatteras Light, NC) northward to the U.S./Canadian border. Implementing regulations for these fisheries are found at 50 CFR part 648, subparts A, H (scup), and I (black sea bass).

Pursuant to §§ 648.120 (scup) and 648.140 (black sea bass), the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the fishing year to assure that the target fishing mortality rate (F) or exploitation rate for each fishery, as specified in the FMP, is not exceeded. The target F or exploitation rate and management measures (e.g., mesh requirements, minimum fish sizes, seasons, and area

restrictions) are summarized here, by species. Detailed background information regarding the status of these stocks and the development of the proposed specifications was provided in the proposed specifications for the 2001 summer flounder, scup, and black sea bass fisheries (65 FR 71042, November 28, 2000) and is not repeated here. In addition to establishing the annual measures, this action modifies the trip limit provisions in the scup and black sea bass fisheries so that they are possession limits, to enhance at-sea enforcement. For black sea bass and scup, this action also specifies that the possession limit is the maximum amount that can be landed in a calendar day. NMFS will publish a proposed and final rule for the 2001 recreational management measures for these fisheries in the **Federal Register** at a later date.

### Scup

The FMP established a target exploitation rate for scup in 2001 of 33 percent. The total allowable catch (TAC) associated with that rate is allocated 78 percent to the commercial sector and 22 percent to the recreational sector by the FMP. Scup discard estimates are deducted from both TACs to establish total allowable landings (TAL) for both sectors (TAC - discards = TAL). The commercial TAL is then allocated with differing percentages to three quota periods: Winter I (January–April)—45.11 percent; Summer (May–October)—30.95 percent; and Winter II (Nov–December)—15.94 percent.

In 2000, NMFS implemented GRAs, a management tool recommended by the Council, to reduce discards of scup in small-mesh fisheries. The GRAs are seasonally closed to specified small-mesh fisheries using trawl gear with codend mesh sizes less than 4.5 inches (11 cm). GRAs initially went into effect on November 1, 2000, with an exemption for the Atlantic herring small-mesh fishery (65 FR 33486, May 24, 2000). They were later modified in size, effective December 23, 2000, (65 FR 81761, December 27, 2000), and a temporary exemption for the *Loligo* squid fishery and a permanent exemption for the Atlantic mackerel small-mesh fishery were implemented.

In the proposed rule for this action, NMFS noted the continued importance of reducing scup discards in small-mesh fisheries. NMFS also noted that it recognized that GRAs are not the only way to address scup discard mortality. Therefore, NMFS sought comments on four options to meet the regulatory requirement at 50 CFR 648.120 that the Regional Administrator implement

measures to ensure that the target exploitation rate would not be exceeded. The four options varied in terms of the TAC level, the discard deduction made to calculate TALs, the size and location of the GRAs, and the fisheries to be exempted from the GRAs. In general, if GRAs were used to reduce scup bycatch, the discard deduction made in establishing the TAL would be lower than it would have been without GRAs, and the resultant quotas would be higher. The options are outlined here.

*Option I:* (1) The Council's proposed quota for scup (a TAC of 8.37 million lb (3.80 million kg), a discard deduction of 2.15 million lb (0.97 million kg), and a TAL of 6.22 million lb (2.82 million kg)); (2) the GRAs currently in effect (as recommended by the Council); and (3) exemptions for Atlantic herring, Atlantic mackerel and *Loligo* squid small-mesh fisheries.

Under this option, the commercial TAC would be 6.53 million lb (2.96 million kg) minus discards of 2.08 million lb (0.94 million kg), resulting in a commercial quota of 4.45 million lb (2.02 million kg). The recreational TAC would be 1.84 million lb (0.83 million kg) minus discards of 0.07 million lb (0.03 million kg), resulting in a recreational harvest limit of 1.77 million lb (0.80 million kg).

*Option II:* (1) The Scup Monitoring Committee's quota recommendation for 2001 (a TAC of 7.85 million lb (3.56 million kg), a discard deduction of 2.85 million lb (1.29 million kg), and a TAL of 5.0 million lb (2.27 million kg)); (2) the GRAs currently in effect (as recommended by the Council); and (3) exemptions for the Atlantic herring and Atlantic mackerel small-mesh fisheries.

Under this option, the commercial TAC would be 6.12 million lb (2.78 million kg) minus discards of 2.76 million lb (1.25 million kg), resulting in a commercial quota of 3.36 million lb (1.52 million kg). The recreational TAC would be 1.73 million lb (0.78 million kg) minus discards of 0.09 million lb (0.04 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

*Option III:* (1) The temporary suspension of GRA restrictions for 2001; and (2) a TAL established at a level that is consistent with the stock assessment's conclusion that commercial discards are approximately equal to commercial landings (a TAC of 7.85 million lb (3.56 million kg), a discard deduction of 3.15 million lb (1.43 million kg), and a TAL of 4.70 million lb (2.13 million kg)).

Under this option, the commercial TAC would be 6.12 million lb (2.78 million kg) minus discards of 3.06

million lb (1.39 million kg), resulting in a commercial quota of 3.06 million lb (1.39 million kg). The recreational TAC would be 1.73 million lb (0.78 million kg) minus discards of 0.09 million lb (0.04 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

*Option IV:* (1) Modified GRAs that are shorter in duration and that exclude the Hudson Canyon area, but incorporate other areas of high scup concentration and small-mesh fishing activities during the winter months; (2) the Monitoring Committee's quota recommendation for 2001 (a TAC of 7.85 million lb (3.56 million kg), a discard deduction of 2.85 million lb (1.29 million kg), and a TAL of 5.0 million lb (2.27 million kg)); and (3) exemptions for the Atlantic herring and Atlantic mackerel small-mesh fisheries.

Under this option, the commercial TAC would be 6.12 million lb (2.78 million kg) minus discards of 2.76 million lb (1.25 million kg), resulting in a commercial quota of 3.36 million lb (1.52 million kg). The recreational TAC would be 1.73 million lb (0.78 million kg) minus discards of 0.09 million lb (0.04 million kg), resulting in a recreational harvest limit of 1.64 million lb (0.74 million kg).

### Final 2001 Scup Specifications

Based on the comments received on the proposed specifications and the requirements of the FMP, NMFS is implementing for 2001 the Council's recommended TAC of 8.37 million lb (3.80 million kg) and associated TAL of 6.22 million lb (2.82 million kg), as described in Option I. This final rule also establishes the modified GRAs and exemptions described in Option IV (exempts Atlantic mackerel and Atlantic herring fisheries), which will remain in effect until modified by a subsequent action.

The TAC implemented by this final rule results in a consistent scup quota throughout the management unit, because it is the same as that adopted by the Commission for 2001. This prevents the confusion and inequities that would occur if different TALs were applicable to state-permitted and federally permitted vessels. In that situation, federally permitted vessels would be precluded from fishing for scup during a Federal closure, even though state-permitted vessels could continue to fish in state waters. Furthermore, because the Commission adopted a 6.22 million lb (282-million kg) scup quota, landings of 6.22 million lb (2.82 million kg) would likely occur in 2001 even if a lower Federal quota of 5.0 million lb (2.27 million kg) were

adopted, because fishing by state-permitted vessels would continue in state waters even after Federal waters were closed to scup fishing.

In the proposed rule for this action, NMFS indicated concern regarding the scup quota recommended by the Council and the underlying assumption that scup biomass would be greater in 2001 than in 2000. However, during the comment period, the New York Department of Environmental Conservation presented new information indicating very strong recent scup year classes, particularly the 1999 year class, providing evidence that scup are rebuilding and that the biomass will increase in 2001. State fisheries managers from Rhode Island and Connecticut also indicated during the December 2000, Council meeting that their states' inshore surveys indicated strong recent scup year classes. These states have provided preliminary information to NMFS showing a strong 1999 year class and also potentially

strong 1998 and 2000 year classes. NMFS recognizes that these data are preliminary. Nevertheless, the information indicates at least one very strong scup year class. If protected from excessive discard mortality, the 1999 year class, and possibly others, should contribute significantly to rebuilding the resource.

Because of these potentially strong recent year classes, the harvest level recommended by the Council and adopted in this final rule can be reasonably expected to attain the target exploitation rate. However, these strong year classes also mean that GRAs remain necessary to protect juvenile scup from discard mortality and to allow rebuilding to take place. The GRAs described in Option IV and implemented through this final rule will extend farther south than the existing GRAs to include areas of high winter scup abundance and coincidental *Loligo* squid fishing effort, as identified by the Northeast Fisheries Science Center

(NEFSC) winter bottom trawl survey and in vessel logbook reports. Although quantitative estimates are not available, these GRAs are expected to reduce scup discards in the winter. These GRAs will also allow small-mesh fishing in the Hudson Canyon area, which has been identified by industry as a priority area for winter fishing activity in several small-mesh fisheries. NMFS believes that these GRAs will reduce scup discards with simultaneously fewer adverse impacts on small-mesh fisheries than the existing GRAs.

The commercial allocation is shown in Table 1. These allocations are subject to a downward adjustment for any overages that occurred in a period's scup harvest in 2000, as is required by § 648.120(d)(6). Scup preliminary landings data are listed in Table 2. Preliminary data indicate that the Winter I and Summer period allocations were exceeded in 2000. The resulting adjusted 2001 commercial quota for each period is given in Table 3.

TABLE 1. PERCENT ALLOCATIONS OF 2001 COMMERCIAL SCUP QUOTA

Period	Percent	TAC <sup>1</sup>	Discards <sup>2</sup>	Quota allocation		Possession	
				lb	kg <sup>3</sup>	lb	kg <sup>3</sup>
Winter I	45.11	2,945,502 (1,336,057)	940,543 (426,623)	2,004,959	909,434	10,000 <sup>4</sup>	4,536
Summer	38.95	2,543,280 (1,153,612)	812,108 (368,366)	1,731,172	785,246	N/A	N/A
Winter II	15.94	1,040,818 (472,107)	332,349 (150,751)	708,469	321,356	2,000	907
Total	100.00	6,529,600 (2,961,776)	2,085,000 (945,740)	4,444,600	2,016,036		

<sup>1</sup>Total allowable catch in pounds (kilograms in parentheses).

<sup>2</sup>Discard estimates in pounds (kilograms in parentheses).

<sup>3</sup>Kilograms are as converted from pounds and may not add to the converted total due to rounding.

<sup>4</sup>Possession limit will drop to 1,000 lb (453.6 kg) per trip when 75 percent of Winter I quota is reached.

TABLE 2. SCUP PRELIMINARY 2000 LANDINGS BY PERIOD

Period	2000 Quota <sup>1</sup>		2000 Landings		2000 Overage	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Winter I	1,037,253	470,490	1,366,591	619,875	329,338	149,385
Summer	637,878	289,337	1,221,189	553,922	583,311	264,585
Winter II	70,356	31,913	34,939	15,848	0	0
Total	1,745,487	791,740	2,622,719	1,189,645	912,649	413,971

<sup>1</sup>Reflects quotas as published on August 18, 2000 (65 FR 50463).

<sup>2</sup>Kilograms are as converted from pounds and may not add to the converted total due to rounding.

TABLE 3. SCUP FINAL 2001 ADJUSTED QUOTAS

Period	2000 Initial Quota		2000 Adjusted quota <sup>1</sup>	
	lb	kg <sup>2</sup>	lb	kg <sup>2</sup>
Winter I	2,004,959	909,434	1,675,621	760,049
Summer	1,731,172	785,246	1,147,861	520,661
Winter II	708,469	321,356	708,469	321,356
Total	4,444,600	2,016,037	3,531,951	1,602,066

<sup>1</sup>Possession limits specified in Table 1.

<sup>2</sup>Kilograms are as converted from pounds and may not add to the converted total due to rounding.

To enhance at-sea enforcement, this action changes the current scup trip limits to possession limits, with the additional provision that these quantities be the maximum allowed to be landed within a calendar day. This action implements a Winter I (January–April) possession limit of 10,000 lb (4,536 kg) with a reduction to 1,000 lb (454 kg) for the remainder of the period when 75 percent of the quota allocation is projected to have been harvested. The Winter II period (November–December) possession limit is decreased from 4,000 lb (1,814 kg) to 2,000 lb (907 kg).

This action also increases the level of catch (threshold) that may be retained on board a vessel that is using mesh smaller than 4.5 inches (11 cm) from 200 lb (91 kg) to 500 lb (227 kg) for the period November 1–April 30. The threshold remains at 100 lb (45 kg) for the period May 1–October 31. In order for a vessel to possess scup in excess of the threshold, mesh smaller than 4.5 inches (11 cm) must be stowed and unavailable for use. In the proposed rule, NMFS noted concern that increasing the threshold for the November–April period could potentially increase bycatch and subsequent discard of undersized scup. However, it was recognized that, if scup, which otherwise would have been discarded, were instead converted to landings due to the change in the mesh threshold without incurring additional discards when the 500-lb (227 kg) threshold was reached, as the Council and industry believed would occur, the change in threshold limit would be acceptable. After reviewing public comment, NMFS concluded that this

belief cannot be tested definitively. Therefore, NMFS has decided to defer to the Council’s judgement on this matter.

**Scup Closure**

Section 648.121 requires the Regional Administrator to monitor the commercial scup quota for each quota period and, based upon dealer reports, state data, and other available information, to determine when the commercial quota for a period has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the scup commercial quota has been harvested and no commercial quota is available for landing scup for the remainder of the Winter I period. The Regional Administrator has determined, based upon dealer reports and other available information, that the scup commercial quota of 1,666,570 lb for the 2001 Winter I period has been harvested.

Section 648.4(b) provides that Federal scup moratorium permit holders agree as a condition of the permit not to land scup in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for scup is available. Therefore, effective 0001 hours, March 1, 2001, further landings of scup by vessels holding Federal scup moratorium permits are prohibited through April 30, 2001. The Summer period for commercial scup harvest will open on May 1, 2001. Effective 0001 hours, March 1, 2001, federally permitted dealers are also advised that

they may not purchase scup from federally permitted vessels that land in coastal states from Maine through North Carolina for the remainder of the Winter I period (through April 30, 2001).

**Black Sea Bass**

The FMP specifies a target exploitation rate of 37 percent for 2001. This target is to be attained through specification of a TAL level that is allocated to the commercial (49 percent) and recreational (51 percent) fisheries. The commercial quota is specified on a coastwide basis, by quarter.

To achieve the target exploitation rate for 2001, this action implements a black sea bass TAL equal to the 2000 level and reduces the possession limits in Quarters 2, 3, and 4. The reduction in the possession limits is intended to allow the fishery to remain open for the entire quarter. This action also changes the current trip limits for black sea bass to possession limits to enhance at-sea enforcement, with the provision that these quantities are the maximum allowed to be landed within a calendar day. The commercial quota and corresponding possession limits are shown in Table 4.

Preliminary data indicate overages of the 2000 quota occurred in Quarters 2, 3, and 4 (Table 5), which requires a corresponding deduction from the 2001 allocations for those quarters. The resulting adjusted 2001 commercial quota for each quarter is given in Table 6. These allocations are preliminary and would be subject to a downward adjustment for any additional overages in a period’s harvest in 2000, as provided in the FMP.

TABLE 4. 2001 BLACK SEA BASS QUARTERLY COASTWIDE COMMERCIAL QUOTAS AND QUARTERLY POSSESSION LIMITS

Quarter	Percent	lb	kg <sup>1</sup>	Possession limits	
				lb	kg <sup>1</sup>
1 (Jan–Mar)	38.64	1,168,760	530,141	9000	4,082
2 (Apr–Jun)	29.26	885,040	401,447	1500	680
3 (Jul–Sep)	12.33	372,951	169,168	1000	454
4 (Oct–Dec)	19.77	597,991	271,244	2000	907
Total	100.00	3,024,742	1,372,000	.....	.....

<sup>1</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

TABLE 5. BLACK SEA BASS PRELIMINARY 2000 LANDINGS BY QUARTER

Period	2000 Quota		2000 Landings		2000 Overage	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
1	1,168,760	530,141	848,018	384,654	0	0
2	734,088	332,982	939,609	426,199	205,521	93,223
3	238,795	108,317	334,871	151,895	96,076	43,579
4	490,038	222,281	571,090	259,042	81,052	36,765
Total	2,631,681	1,193,721	2,693,588	1,221,791	382,649	173,567

<sup>1</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

TABLE 6. BLACK SEA BASS FINAL 2001 ADJUSTED QUOTAS

Period	2001 Initial quota		2001 Adjusted quota	
	lb	kg <sup>1</sup>	lb	kg <sup>1</sup>
1	1,168,760	530,141	1,168,760	530,141
2	885,040	401,447	679,519	308,225
3	372,951	169,168	276,875	125,588
4	597,991	271,244	516,939	234,480
Total	3,024,742	1,372,000	2,642,093	1,198,433

<sup>1</sup> Trip limits specified in Table 4.

<sup>2</sup> Kilograms are as converted from pounds and may not add to the converted total due to rounding.

### Black Sea Bass Closure

Section 648.141 requires the Regional Administrator to monitor the commercial black sea bass quota for each quota period and, on the basis of dealer reports, state data, and other available information, to determine when the commercial quota has been harvested. NMFS is required to publish a notification in the **Federal Register** advising and notifying commercial vessels and dealer permit holders that, effective upon a specific date, the black sea bass commercial quota has been harvested and no commercial quota is available for landing black sea bass for the remainder of the quarter 1 period, north of 35°15.3' N. lat. The Regional Administrator has determined, based upon dealer reports and other available information, that the black sea bass commercial quota of 1,168,760 lb (530,141 kg) for the 2001 quarter 1 period has been harvested.

The regulations at § 648.4(b) provide that Federal black sea bass moratorium permit holders agree as a condition of the permit not to land black sea bass in any state after NMFS has published a notification in the **Federal Register** stating that the commercial quota for the period has been harvested and that no commercial quota for the black sea bass is available. The Regional Administrator has determined that the quarter 1 period for black sea bass no longer has commercial quota available. Therefore, effective 0001 hrs local time, March 7, 2001, further landings of black sea bass in coastal states from Maine through North Carolina, north of 35°15.3' N. lat., by vessels holding commercial Federal fisheries permits are prohibited through March 31, 2001. The 2001 quarter 2 period for commercial black sea bass harvest will open on April 1, 2001. Effective March 7, 2001, federally permitted dealers are also advised that they may not purchase black sea bass from federally permitted black sea bass moratorium permit holders who land in coastal states from Maine through North Carolina, north of 35°15.3' N. lat., for

the remainder of the quarter 1 period (through March 31, 2001).

The regulations at § 648.4(b) also provide that, if the commercial black sea bass quota for a period is harvested and the coast is closed to the possession of black sea bass north of 35°15.3' N. lat., any vessel owners who hold valid commercial permits for both the black sea bass and the NMFS Southeast Region Snapper-Grouper fisheries may surrender their black sea bass moratorium permit by certified mail addressed to the Regional Administrator (see **ADDRESSES**) and fish pursuant to their Snapper-Grouper permit, as long as fishing is conducted exclusively in waters, and landings are made, south of 35°15.3' N. lat. A moratorium permit for the black sea bass fishery that is voluntarily relinquished or surrendered will be reissued upon the receipt of the vessel owner's written request after a minimum period of 6 months from the date of cancellation.

### Comments and Responses

A total of 30 comments on the proposed rule were received in reference to the scup and black sea bass specifications, primarily from fishing industry participants and organizations representing the commercial fishing industry. Other commenters included the Massachusetts Division of Marine Fisheries, the New York State Department of Environmental Conservation (NYDEC), a university professor, and several environmental organizations, which submitted one co-signed comment. All comments received prior to the close of the comment period that directly related to the measures in the proposed rule were considered in developing the measures contained in this final rule. Several commenters made points that went beyond the scope of the proposed action; those points are not responded to here.

*Comment 1:* Twenty commenters questioned the scientific information underlying the proposed 2001 scup specifications. In addition, eight commenters stated that recently

available state survey data indicate that scup abundance is higher than was indicated by the data used in developing the scup specifications, and that the 2001 allowed harvest level should be the level recommended by the Council in scup Option I. Conversely, one commenter felt that adopting a higher scup TAL would violate the overfishing, rebuilding, and bycatch reduction requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), its implementing regulations, and the FMP.

*Response:* As noted in the preamble, the most recent stock assessment was conducted in June 2000 (SARC 31) and incorporated the best scientific information available at that time. Several state fishery managers presented more recent information at the December 2000, meeting of the Council and the Commission. NYDEC data showed very strong recent scup year classes, particularly in 1999, and indicated that scup are rebuilding and that biomass will increase in 2001. State representatives from Rhode Island and Connecticut also noted at the meeting that their state surveys preliminarily show similar increases in recent year classes. These state survey data indicate that the biomass estimated for 2001 will likely be higher than the biomass estimated for 2000. This recent information indicating a scup biomass increase provided the basis for NMFS' decision to set the 2001 scup TAL at the level recommended by the Council and Board (reflected in scup Option I).

SARC 31 also noted evidence of strong year classes in 1997 and 1999, and an increase in spawning stock abundance since 1998. SARC 31 concluded that fishing mortality should be reduced substantially and immediately, and that a reduction in fishing mortality from discards would have the most impact on rebuilding the stock. Therefore, in recognizing a likely increase in scup abundance, NMFS also recognizes the imperative to maintain GRAs to reduce discard mortality of

juvenile scup. GRAs are necessary to protect the strong recent year classes, which have not yet reached harvestable size. These year classes provide opportunities for future rebuilding of the scup stock. NMFS believes the GRAs contained in Option IV and implemented through this final rule will provide the requisite protection.

*Comment 2:* One commenter felt that NMFS' failure to take action to lower the Winter I scup trip possession limit would violate the overfishing, rebuilding, and bycatch reduction requirements of the Magnuson-Stevens Act, its implementing regulations, and the FMP.

*Response:* NMFS notes that, although Council staff recommended lowering the Winter I scup possession limit, the Scup Monitoring Committee did not support that recommendation. The allowable harvest limit is the primary measure to control mortality in the scup fishery, because the fishery is closed upon attainment of the harvest limit. Possession limits primarily serve to distribute the quota over the quota period. This final rule lowers the level at which the landing limit is reduced to 1,000 lb from 85 percent of the Winter I allocation to 75 percent of the Winter I allocation, based on the recommendations of the Council and the Scup Monitoring Committee. Lowering the trigger to 75 percent of the Winter I quota will reduce the trip limit earlier in the Winter I period, and better ensure that the Winter I period quota is not exceeded.

*Comment 3:* Nineteen commenters stated that they disagreed with the scup discard statistics. Four of these commenters referred to an analysis of NMFS sea sampling (observer) data prepared by Dr. Eric Powell, Rutgers University, that concluded that the discard problem is primarily associated with fishing trips directing on scup, not trips directing on *Loligo* squid.

*Response:* NMFS has consistently stated that it recognizes that it is difficult to make a precise determination of scup discards because of the limited information available. Sea sampling data for small-mesh fishery trips, which are the best available discard information, are not available for all areas and time periods of concern. However, SARC 31 concluded that commercial discards may have equaled or exceeded commercial landings during 1989-1997. SARC 31 also noted that the limited sea sampling information suggests that discards are quite variable.

Based on the available sea sampling data, the overall percent of discards in the *Loligo* squid fishery is relatively

low, when calculated by comparing the weight of scup caught to the total weight of the catch. However, the percentage is affected by the fact that the total volume of fish caught by vessels fishing for *Loligo* squid is very high. A review of the sea sampling data shows that the total poundage of scup discarded in the *Loligo* fishery can be substantial. Therefore, NMFS cannot currently support an exemption from the GRAs for the *Loligo* fishery.

NMFS notes that the analysis conducted by Dr. Powell has not yet been peer reviewed and that such a review is necessary in order to evaluate properly the results of the analysis.

*Comment 4:* One commenter objected to exempting both the *Loligo* squid and the Atlantic mackerel small-mesh fisheries from the GRAs. This commenter stated that the *Loligo* fishery is considered the most significant source of scup discards. Conversely, several commenters showed support for exempting the *Loligo* squid fishery from GRA measures.

*Response:* NMFS recognizes that overall scup discards as a percent of total *Loligo* landings are comparatively low. As stated in the response to comment 3, the main reason for this is that the overall volume of fish caught in the *Loligo* fishery is large. Available NMFS observer data show that occasional large scup discard events (as high as 28 percent) in the directed *Loligo* fishery do occur. These occasional large discard events are of concern. Therefore, NMFS has not exempted the *Loligo* fishery from the GRA requirements. *Loligo* was exempted from the modified Northern GRA implemented from December 23, 2000, through December 31, 2000, because the *Loligo* quota had been harvested. Thus, no directed *Loligo* fishery was occurring during this time period, having minimal impacts on the scup resource.

The highest percentage of scup bycatch for any directed mackerel trip, based on the limited sea-sampling data, was 6 percent. The Scup Monitoring Committee recommended that the Atlantic mackerel small-mesh fishery be exempt from the GRA requirements. Based on the available observer information and the Scup Monitoring Committee recommendation, NMFS believes that exempting the directed small-mesh mackerel fishery will not jeopardize the attainment of scup mortality reduction objectives.

*Comment 5:* Two commenters supported scup Option I, which contains the GRAs implemented on December 23, 2000, with exemptions for the *Loligo* squid, Atlantic mackerel, and Atlantic herring small-mesh fisheries,

and the Council's recommended scup TAL of 6.22 million lb (2.82-million kg).

*Response:* Scup Option I would have retained GRAs, but would have exempted the *Loligo* squid fishery from the GRA restrictions. As explained in the responses to Comments 4 and 5, NMFS cannot currently support a *Loligo* squid small-mesh exemption because of concerns that the *Loligo* fishery is a significant source of scup discard mortality, despite the fact that the overall percentage of scup discarded relative to the *Loligo* catch may be low.

*Comment 6:* Twenty-six commenters supported the temporary suspension of GRAs as proposed in scup Option III, with 11 of these commenters favoring an increase of the scup TAL to the level proposed in Option I. Many commenters stated that GRAs are not necessary because significant reductions in scup mortality are being achieved through other measures, including periodic fishery closures due to quota attainment, the 4.5-inch (11.4-cm) scup minimum mesh size requirement, the minimum fish size requirement, and gear improvements adopted by industry that reduce scup discards.

*Response:* The objective of the scup management measures is to ensure that scup mortality, both from discards in small-mesh fisheries and from the directed scup fishery, is controlled. Option III included a GRA suspension only in conjunction with a TAL established at a level consistent with the SARC 31 conclusion that commercial discards are approximately equal to commercial landings. As such, Option III would have reduced the allowable harvest level to compensate for suspension of the GRAs. Combining the GRA suspension with a higher harvest level would have defeated the objective of Option III.

*Comment 7:* Two commenters supported scup Option III but stated that, if NMFS felt GRAs were necessary, they would support scup Option IV, which allows small-mesh fisheries in the Hudson Canyon area.

*Response:* As discussed earlier, NMFS believes that GRAs are necessary, especially in consideration of the recent strong scup year classes that need protection to allow stock rebuilding. Therefore, NMFS is implementing the GRAs contained in scup Option IV. These GRAs will provide necessary protection to juvenile scup, yet allow small-mesh fishing activity in the Hudson Canyon, which has been identified by industry as a priority area for small-mesh fisheries.

*Comment 8:* Some commenters expressed opinions and concerns about the areas encompassed by the GRAs

proposed in Option IV. Three commenters disagreed with the location of the proposed GRAs, and stated that these areas do not coincide with areas of scup abundance. Conversely, another commenter supported the proposal in scup Option IV to extend the boundary of the Southern GRA farther south, but opposed opening the Hudson Canyon area to small-mesh fishing. This commenter stated that the proposed rule provided no analysis to support opening the Hudson Canyon, and cited information in the EA indicating that the northern portion of the Hudson Canyon area is a source of significant scup discards.

*Response:* On the basis of 1992-1998 NEFSC Winter Bottom Trawl Surveys, NMFS believes that extending the GRAs farther south and widening the GRAs to include more of the area surrounding the 100-fathom contour will provide protection for abundant winter scup congregations and compensate, in terms of scup discards, for exempting the Hudson Canyon area. Initially, the southern area was not included in the GRAs because there were no sea-sampling trips conducted in the area. However, a comparison of Winter Bottom Trawl Survey information with vessel trip report data for the *Loligo* fishery, prepared in conjunction with the 2001 specifications, indicates this is a key area of scup abundance that coincides with numerous *Loligo* fishing trips. Although the anticipated reduction in discards is not quantifiable, the EA provides charts documenting that winter scup abundance coincides with significant *Loligo* squid fishing activity in the area.

*Comment 9:* One commenter stated that NMFS Winter Bottom Trawl Surveys from 1992 to 1998 show lower scup abundance in the GRAs proposed in Options I, II and IV than in areas outside the GRAs.

*Response:* GRAs were initially developed in the 2000 scup specifications based on sea-sampling data and industry input. The northern GRA in scup Option IV, and the three GRAs in Options I and II, were developed in this manner. There were no sea sampling data available for trips conducted south of 38°N. lat. Therefore, NMFS considered other available information pertaining to the fishery south of that area. NMFS compared the distribution of scup, based on data from the 1992-98 Winter Bottom Trawl Survey, with fishing trips that landed *Loligo* squid, based on data reported by the industry in Fishing Vessel Trip Reports. The southern GRA included in scup Option IV includes areas where scup are abundant at the same time that

small-mesh fishing occurs for *Loligo* squid. Although the two areas in Option IV were developed using different databases, NMFS believes that both GRAs are appropriately based on the best available scientific information.

*Comment 10:* Two commenters stated that the analysis of the economic impact of GRAs is unrealistic. One commenter questioned the conclusion of the analysis, and instead restated the conclusion to be, "that under 5 percent of 1158 boats will suffer a loss of more than 5 percent of revenue associated with small-mesh fisheries in this time period." Both commenters included information comparing selected vessel revenues from November 1999 to November 2000 to demonstrate revenue declines. Conversely, one commenter stated that NMFS failed to consider any economic benefits to scup fishermen resulting from reducing discards in small-mesh fisheries.

*Response:* The NMFS integrated analysis in the EA/RIR/IRFA was conducted to assess the overall potential impacts of revising the GRAs in conjunction with the 2001 specifications being established for summer flounder, scup and black sea bass. The overall projected revenue impacts of the proposed 2001 GRA options and specifications were compared with the impacts of the status quo measures (2000 specifications and GRAs). The commenters, on the other hand, presented revenue information showing decreases in revenue for selected vessels in November 2000 compared to November 1999, a year with no GRAs. Also, NMFS does not agree that all revenue changes in November 2000 were necessarily due to the imposition of GRAs. Revenue changes can occur for other reasons, including the fact that several important Mid-Atlantic fisheries were closed in November 2000 due to quota attainment.

The commenters may also have misinterpreted the assumptions underlying the impacts analysis in the EA/RIR/IRFA. The analysis considered the annual impacts on all 1,158 vessels that had landed summer flounder, scup or black sea bass, or that had fished with mobile gear with mesh sizes of less than 4.5 inches (11.4 cm). This was determined to be the affected universe for these specifications. The analysis did not only consider the impacts on revenues derived solely from small-mesh species for the time period of the GRAs. Rather, the analysis incorporated the impacts of the proposed TALs, trip limits, GRAs and other measures. Importantly, the analysis indicated that all vessels fishing with small-mesh gear,

at least to some extent, also participated in the summer flounder, scup or black sea bass fisheries.

NMFS recognizes the benefits to the scup resource resulting from the proposed GRA measures that are aimed at reducing scup discards in small-mesh fisheries. However, it is difficult to quantify these benefits, since stock abundance is dependent on several factors unrelated to fishing activity, making it difficult to determine a stock's response to a given management measure.

*Comment 11:* One commenter stated that it would be a violation of the Magnuson-Stevens Act to suspend the GRAs because suspension would be contrary to national standard 9, which requires that management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

*Response:* NMFS is not suspending the GRAs.

*Comment 12:* Three commenters questioned the enforceability of the GRA measures. One commenter felt that GRAs are generally unenforceable, while two commenters felt that the two specific GRA Options contained in the proposed rule for this action are unenforceable due to their small size.

*Response:* The GRAs initially established in 2000 were modified effective December 23, 2000 (65 FR 81761, December 27, 2000). The configuration of the GRAs implemented through that rule were the same as the GRAs in scup Options I and II. The U.S. Coast Guard indicated, in reviewing the proposal to modify the GRAs, that the geographic configuration, size, and time periods of the GRAs contained in Options I and II are enforceable, and that they can provide adequate surveillance to detect the majority of fishing vessels operating in the GRAs. NMFS notes that the GRAs in Option IV, which are implemented through this final rule, are larger in area and more regularly shaped than the existing GRAs, and, therefore, should be more easily enforced than the current GRAs.

*Comment 13:* One commenter was concerned that all of the scup options represent a retreat from regulations designed to maximize protection of juvenile scup. The commenter felt that the options reduce impacts on small-mesh fisheries at the expense of scup and other bycatch species. This commenter appeared to support the GRAs originally implemented in the 2000 specifications based on the belief that either of the revised GRA options contained in the proposed rule would weaken scup rebuilding.

*Response:* As stated in the responses to comments 7 and 8, the GRAs in Option IV, and implemented through this final rule, will provide protection to the scup resource and allow it to rebuild, while mitigating to some extent the negative economic impacts on small-mesh fisheries.

*Comment 14:* Three commenters favored raising the minimum mesh threshold for scup from 200 lb (90.7 kg) to 500 lb (226.8 kg) for the November 1 through April 30 period. These commenters stated that such a measure would help reduce regulatory discards in the scup fishery. One commenter opposed the measure and stated that it would violate the overfishing, rebuilding, and bycatch reduction requirements of the Magnuson-Stevens Act.

*Response:* NMFS raised this issue in the proposed rule and specifically requested public comment. It is not possible to quantify the effect of increasing the minimum mesh size threshold on scup discards at this time. If discards are converted to landings due to the change in the mesh threshold, without additional discards occurring when the 500-lb (226.8-kg) threshold is reached, as assumed by the Council and industry, then the impact on scup mortality would be negligible. In the absence of information to the contrary, this final rule implements an increase in the threshold as recommended by the Council.

*Comment 15:* One commenter supported an increase in the TAL for black sea bass to the least restrictive level (7.91 million lb (3.59 million kg)) presented in the alternatives analyzed in the EA/RIR/IRFA.

*Response:* The commenter is recommending a harvest level that was not formally considered by the Council, but was analyzed in the impacts analysis for purposes of comparison. This level was not recommended by the Council and is not implemented in this final rule. The harvest level recommended by the commenter would result in an exploitation rate that would exceed the black sea bass exploitation target for 2001, as described in the FMP.

*Comment 16:* Two commenters supported the change in the black sea bass regulations that specify landing limits as possession limits. Five commenters generally supported changes to the specific possession limits, though they did not support all of the specific proposed changes. In general, the commenters were seeking lower possession limits that would enable fishermen to fish for the entire quarter.

*Response:* This final rule implements the proposed changes to the black sea bass trip limits for 2001.

#### Changes From the Proposed Rule

In § 648.14(a)(122), “*Loligo squid*” is added to the list of species that are not exempt from the GRA requirements and references to the GRAs are revised.

In § 648.122, paragraph (a) is revised to reflect the dates and coordinates of the newly revised Southern GRA. Also, in § 648.122, paragraph (c) is revised to reflect the removal of Northern GRA II, and is replaced with the transiting provisions that were formerly contained in paragraph (d) and paragraph (d) is removed and reserved.

In § 648.123, paragraph (a)(5) is revised for consistency with other net stowage regulations.

No other changes were made from the proposed rule.

#### Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas and related management measures for the scup, and black sea bass fisheries, which are used to control harvest of these fisheries and to restrict landings when their quotas are harvested. Action to restrict landings must be taken immediately upon attainment of the quota to conserve fishery resources. The Winter I scup allocation and the Quarter 1 black sea bass allocation have been harvested. It would be contrary to the public interest to provide prior notice of these restrictions, since the allocations have already been harvested and the regulations require the publication of this action. Failure to implement this provision without due expedition would result in overfishing. Therefore, the Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B) to waive the requirement to provide prior notice and opportunity for public comment on the closure of the Winter I scup fishery in the coastal states from Maine through North Carolina and closure of the Quarter 1 black sea bass fishery in these states north of 35°15.3' N. lat. Failure to implement this provision immediately would result in overfishing, so under 5 U.S.C. 553(d)(3), the AA also finds good cause to waive the 30-day delay in effectiveness of the closure of the Winter I scup fishery in the coastal states from Maine through North Carolina and closure of the Quarter 1 black sea bass fishery in these states north of 35°15.3' N. lat. Likewise, it would be impracticable to delay implementation of the remaining quota

provisions, because doing so would prevent the agency from carrying out its function of preventing overfishing of the scup, and black sea bass resources in the remaining periods. The fisheries covered by this action are already in progress and quota monitoring for the fishing years began on January 1, 2001. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the 2001 quotas and related management measures, including the landings restrictions. The provision in this final rule that increases the threshold possession limit for scup above which a vessel is required to use 4.5-inch (11.4-cm) minimum mesh from 200 lb (90.7 kg) to 500 lb (226.8 kg) relieves a restriction and, under 5 U.S.C. 553(d)(1), is not subject to a 30-day delay in effectiveness.

NMFS determined that this rule will be implemented in a manner that is consistent, to the maximum extent practicable, with the approved coastal management programs of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia and Florida. This determination was submitted for review by the responsible state agencies on October 24, 2000, under section 307 of the Coastal Zone Management Act. The following states submitted responses concurring with NMFS' determination: Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, North Carolina and Georgia. Maine, New Hampshire, Maryland, South Carolina and Florida did not respond and, therefore, consistency is inferred. The State of Connecticut concurred with the determinations for all of the components of the proposed 2001 specifications except for the summer flounder TAL, which is not included in this action.

The Council and NMFS prepared a final regulatory flexibility analysis (FRFA) for this action. The document contains an analysis of the final scup and black sea bass analysis and a draft analysis of the proposed summer flounder measures. A copy of this analysis is available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here. A summary of the FRFA follows.

A description of the reasons why action by the agency is being taken and the objectives of this final rule are explained in the preambles to the

proposed rule and final rule and are not repeated here. This action does not contain any collection-of- information, reporting, recordkeeping, or other compliance requirements.

**Public Comments**

Thirty-four comments were received on the measures contained in the proposed rule. Four of the comments exclusively addressed the summer flounder measures, which are not implemented through this final rule. Two were submitted in response to the initial regulatory flexibility analysis (IRFA) of the expected impacts of these measures on small entities. NMFS has responded to these comments in the Comments and Responses section of this final rule (see response to Comment 10). Additional comments were received not specifically on the IRFA, but related to economic impacts (see responses to Comments 7 and 16). Changes were made to the measures outlined in the proposed rule regarding the scup TAL; the size, location, and season of the GRAs; and exemptions to the requirements of the GRAs. Although these changes were not directly related to the comments received on the IRFA, the intent of the changes was, in part, to minimize the economic effect on small entities. These changes and the reasons for them are discussed in the responses to Comments 1, 7, 8 and 13, as well as in the preamble to this final rule.

**Number of Small Entities**

The measures established by this action potentially impact a total of 1,158 vessels that participated in at least one of the summer flounder, scup, and black sea bass fisheries or that had fished with mobile gear with less than 4.5-inch (11.43-cm) mesh inside at least one of the proposed GRAs.

**Minimizing Significant Economic Impact on Small Entities**

In the FRFA, NMFS analyzed the measures being implemented in this action. Although summer flounder measures are not being implemented through this action, a summer flounder TAL of 17.91 million lb (8.12 million kg) was assumed for comparing the impacts of the various options. The analysis compared the effects of the measures with both the 2000 adjusted quotas and with the actual 2000 landings when available. When not available, 1999 landings were used. In terms of overall impacts on revenues, the scup measures selected for implementation (Option V) have the second highest positive impact on revenues. Using the landings baseline

proration method, Options I, III, and V are expected to yield total gross revenues higher than those yielded by the status quo measures by approximately \$0.91 million, \$0.40 million and \$0.70 million respectively, whereas Options II and IV yielded total gross revenues lower than the status quo by approximately \$0.16 million and \$0.13 million, respectively. Option I is presumed to have produced the highest overall revenues because the *Loligo* fishery is exempted from the GRA restrictions. This Option was not selected for implementation in this action because, as explained in the preamble, available information does not justify an exemption of the *Loligo* fishery.

The FRFA also analyzed revenue impacts on individual vessels, as summarized here:

**PERCENT OF VESSELS EXPERIENCING REVENUE LOSS > 5%**

	Landings Base-line	Quota Base-line
Option I	2.1%	3.4%
Option II	3.2%	4.6%
Option III	2.8%	4.1%
Option IV	2.9%	4.7%
Option V	2.9%	4.4%

The measures selected for implementation (Option V) have slightly greater impacts than either Option I or Option III. As discussed earlier, Option I was not selected for implementation because the available information does not support an exemption for *Loligo* squid. The impact of Option III is presumed to be lower because there are no GRAs established. This alternative was not selected for implementation because, as explained in the preamble, NMFS believes that GRAs remain necessary for scup conservation. The specific GRAs implemented by this action were selected to moderate the economic impacts on small entities by extending GRAs further south and opening the Hudson Canyon area.

For black sea bass, the harvest level adopted in this final rule minimizes significant economic impacts while achieving the stated objectives of the FMP. No other harvest level that was considered would meet this objective while minimizing significant economic impacts on small entities.

Revision of the trip limits in the scup and black sea bass fisheries were recommended by the Council to allow these fisheries to remain open for a longer period of time, preferably for the entire quota period. This is expected to

reduce the period of time that a fishery would be closed, and, thereby, provide for a more reliable stream of income for small entities.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with this directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this proposed rule. Such comments should be sent to the Northeast Regional Administrator (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: February 22, 2001.

**William T. Hogarth**

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

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

**PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES**

1. The authority citation for part 648 continues to read as follows:

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

2. In § 648.14, paragraph (a)(123) is removed; and paragraphs (a)(84), (a)(92), (a)(122) and (u)(9) are revised to read as follows:

**§ 648.14 Prohibitions.**

(a) \* \* \*

(84) Fish for, catch, possess, or retain scup in or from the EEZ north of 35°15.3' N. lat. in excess of the amount specified in § 648.123 (500 lb (226.8 kg) or more from November 1– April 30, or 100 lb (45.4 kg) or more from May 1– October 31), unless the vessel meets the gear restrictions in § 648.123.

\* \* \* \* \*

(92) Fish for, catch, possess, or retain 1,000 lb (453.4 kg) or more of black sea bass in or from the EEZ north of 35°15.3' N. lat., the latitude of Cape Hatteras Light, NC, to the U.S. - Canadian border, unless the vessel meets the gear restrictions of § 648.144.

\* \* \* \* \*

(122) Fish for, catch, possess, retain or land *Loligo* squid, silver hake or black sea bass in or from the areas and during the time periods described in § 648.122(a) or (b) while in possession of any trawl nets or netting that do not meet the minimum mesh restrictions or that are modified, obstructed, or constricted, as specified in § 648.122 and § 648.123(a), unless the nets or

netting are stowed in accordance with § 648.23(b).

\* \* \* \* \*

(u) \* \* \*

(9) Possess, retain, or land black sea bass harvested in or from the EEZ in excess of the commercial possession limit established at § 648.140.

\* \* \* \* \*

3. In § 648.120, paragraph (b)(2) is revised to read as follows:

**§ 648.120 Catch quotas and other restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) Possession limits for the Winter I and Winter II periods. The possession limit is the maximum quantity of scup that is allowed to be landed within a 24-hour period (calendar day).

\* \* \* \* \*

4. In § 648.122, paragraph (d) is removed and reserved, and paragraphs (a), (b), and (c) are revised to read as follows:

**§ 648.122 Season and area restrictions.**

(a) *Southern Gear Restricted Area—(1) Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**SOUTHERN GEAR RESTRICTED AREA**

Point	N. Lat.	W. Long.
SGA1	39°20'	72°50'
SGA2	39°20'	72°25'
SGA3	38°00'	73°55'
SGA4	37°00'	74°40'
SGA5	36°30'	74°40'
SGA6	36°30'	75°00'
SGA7	37°00'	75°00'
SGA8	38°00'	74°20'
SGA1	39°20'	72°50'

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (a)(1) of this section apply only to vessels in the Southern Gear Restricted Area that are fishing for or in possession of the following non-exempt species: *Loligo* squid, black sea bass and silver hake (whiting).

(b) *Northern Gear Restricted Area I—(1) Restrictions.* From November 1 through December 31, all trawl vessels in the Northern Gear Restricted Area I that fish for or possess non-exempt species as specified in paragraph (b)(2) of this section must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension, unless otherwise specified in this section. The Northern Gear Restricted Area I is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

**NORTHERN GEAR RESTRICTED AREA I**

Point	N. Lat.	W. Long.
NGA1	41°00'	71°00'
NGA2	41°00'	71°30'
SGA3	40°00'	72°40'
SGA4	40°00'	72°05'
NGA1	41°00'	71°00'

(2) *Non-exempt species.* Unless otherwise specified in paragraph (d) of this section, the restrictions specified in paragraph (b)(1) of this section apply only to vessels in the Northern Gear Restricted Area I that are fishing for, or in possession of, the following non-exempt species: *Loligo* squid, black sea bass and silver hake (whiting).

(c) *Transiting.* Vessels that are subject to the provisions of the Southern and Northern GRAs, as specified in paragraphs (a) and (b) of this section, respectively, may transit these areas provided that trawl net codends on board of mesh size less than that specified in paragraphs (a) and (b) of this section are not available for immediate use and are stowed in accordance with the provisions of § 648.23(b).

(d) [Reserved]

\* \* \* \* \*

5. In § 648.123, paragraphs (a)(1) and (a)(5) are revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) \* \* \*

(1) *Minimum mesh size.* The owners or operators of otter trawlers who are issued a scup moratorium permit and who possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, must fish with nets that have a minimum mesh size of 4.5 inches (11.43 cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For codends with fewer than 75 meshes, the minimum-mesh-size codend must be a minimum of one-third of the net, measured from the terminus of the codend to the headrope, excluding any turtle excluder device extension. Scup on board these vessels shall be stored separately and kept readily available for inspection.

\* \* \* \* \*

(5) *Stowage of nets.* The owner or operator of an otter trawl vessel retaining 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, and subject to the minimum mesh requirements in paragraph (a) (1) of this section, and the owner or operator of a mid water trawl or other trawl vessel subject to the minimum mesh size requirement in § 648.122, may not have available for immediate use any net, or any piece of net, not meeting the minimum mesh size requirement, or mesh that is rigged in a manner that is inconsistent with the minimum mesh size. A net that is stowed in conformance with one of the methods specified in § 648.23 (b), and that can be shown not to have been in recent use, is considered to be not available for immediate use.

\* \* \* \* \*

6. In § 648.140, paragraph (b) (2) is revised to read as follows:

**§ 648.140 Catch quotas and other restrictions.**

\* \* \* \* \*

(b) \* \* \*

(2) A commercial possession limit for all moratorium vessels may be set from a range of zero to the maximum allowed to assure that the quarterly quota is not exceeded, with the provision that these quantities be the maximum

allowed to be landed within a 24-hour period (calendar day).

\* \* \* \* \*

[FR Doc. 01-4973 Filed 2-26-01; 4:00 pm]

BILLING CODE 3510-22-S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 010112013-1013-01; I.D. 022601B]

#### Fisheries of the Economic Exclusive Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

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

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the first seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), February 26, 2000, until 1200 hrs, A.l.t., May 17, 2001.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), was established by the Final 2001 Harvest Specifications and Associated Management Measures for the Groundfish Fisheries Off Alaska (66 FR 7276, January 22, 2001) for the first season, the period January 1, 2001, through May 17, 2001, as 175 metric tons. The other hook-and-line fishery includes all groundfish except sablefish or demersal shelf rockfish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the first seasonal apportionment of the 2001 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

#### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action because the first seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear in the GOA has been caught constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly the need to implement these measures in a timely fashion because the first seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear in the GOA has been caught constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: February 26, 2001.

**Dean Swanson,**

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

[FR Doc. 01-5001 Filed 2-26-01; 4:40 pm]

BILLING CODE 3510-22-S

# Proposed Rules

Federal Register

Vol. 66, No. 41

Thursday, March 1, 2001

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 2000-NM-342-AD]

RIN 2120-AA64

#### Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

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

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

**SUMMARY:** This document proposes the superseding of an existing airworthiness directive (AD), applicable to all Model A320 series airplanes, that currently requires repetitive measurements of the deflection of the elevator trailing edge; inspections of the elevator servo controls and their attachments; and replacement of worn or damaged parts, if necessary. This action would require periodic inspection of the elevators for excessive freeplay; repair or replacement of worn parts, if excessive freeplay is detected; replacement of the elevator servo controls with modified elevator servo controls; and modification of the elevator neutral setting. It would also revise the applicability to include additional models of airplanes. This proposal is prompted by additional reports of severe vibration in the aft cabin of Model A320 series airplanes and studies which indicate that the primary cause is excessive freeplay in the elevator attachments. The actions specified by the proposed AD are intended to prevent excessive vibration of the elevators, which could result in reduced structural integrity, leading to reduced controllability of the airplane.

**DATES:** Comments must be received by April 2, 2001.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-

342-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. Comments may be submitted via fax to (425) 227-1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000-NM-342-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Tim Dulin, Aerospace Engineer, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2141; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

- For each issue, state what specific change to the proposed AD is being requested.

- Include justification (e.g., reasons or data) for each request.

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 action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000-NM-342-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-342-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

On January 29, 1992, the FAA issued AD 92-04-06, amendment 39-8177, (57 FR 6068, February 20, 1992), applicable to all Airbus Model A320 series airplanes. [A correction to that final rule was published in the **Federal Register** on April 1, 1992 (57 FR 11137).] That AD requires repetitive measurements of the deflection of the elevator trailing edge; inspections of the elevator servo controls and their attachments; and replacement of worn or damaged parts, if necessary. The AD was prompted by reports of in-flight airframe vibrations resulting from worn bolts and bushings on the elevator servo attachments. The requirements of that AD are intended to prevent excessive freeplay (backlash) at the elevator trailing edge, resulting in in-flight airframe vibrations, which could lead to reduced controllability of the airplane.

#### Actions Since Issuance of Previous Rule

Since issuance of AD 92-04-06, there have been more reports of airframe vibration. To investigate this problem, Airbus conducted extensive flight tests with varying degrees of elevator servo control backlash (freeplay) and elevator hinge moments to determine the source of the elevator vibration. Airbus found that a combination of elevator freeplay and low hinge moment caused the

vibration. Airbus describes this vibration as limit cycle oscillation (i.e., sustained vibration at a fixed frequency and limited amplitude).

#### Explanation of Relevant Service Information

To address this problem, Airbus issued two service bulletins and made a change to the Aircraft Maintenance Manual for the affected airplanes.

Airbus has issued Service Bulletin A320-27-1111, dated August 16, 1996, and Revision 01, dated November 14, 2000, which provides procedures to replace the existing elevator servo controls with modified elevator servo controls having improved spherical bearings. The service bulletin addresses the problem of elevator freeplay (backlash) at the servo control eye-end, which had been found to be due to wear of the spherical bearings.

Airbus has also issued Service Bulletin A320-27-1114, Revision 04, dated December 7, 1999, which provides procedures to modify the elevator neutral setting to ensure that the elevators are sufficiently loaded in most flight conditions. The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has approved these service bulletins, but has not classified them as mandatory.

Finally, Airbus has changed the Aircraft Maintenance Manual (AMM) to reduce the allowable elevator freeplay from 10 millimeters to 7 millimeters.

#### FAA's Conclusions

Airbus describes the vibration as a limit cycle oscillation (resulting from a nonlinear behavior of the structure) that is acceptable from a static strength, fatigue, and controllability standpoint. Nevertheless, the FAA considers the vibration to be an aeroelastic stability problem, which could potentially result in reduced structural integrity, leading to reduced controllability of the airplane. In order to ensure that this condition does not occur in-service, the FAA proposes to mandate repetitive inspections for freeplay per the new aircraft maintenance manual limits, modification of the actuator bearings, and incorporation of the new neutral setting of the elevator control surface.

#### U.S. Type Certification of the Airplanes

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral

agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

#### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 92-04-06 to require periodic inspection of the elevators for excessive freeplay; repair or replacement of worn parts, if excessive freeplay is detected; replacement of the elevator servo controls with modified elevator servo controls; and modification of the elevator neutral setting. These actions would be required to be accomplished in accordance with the service bulletins and AMM described above. The proposed AD would also revise the applicability to add Model A319 and A321 series airplanes, which are similar in design to Model A320 series airplanes, but were not on the U.S. registry at the time of issuance of AD 92-04-06.

#### Cost Impact

There are approximately 291 airplanes of U.S. registry that would be affected by this proposed AD.

Inspection for freeplay in the elevators would take approximately 2 work hours at an average labor rate of \$60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the initial inspection proposed by this AD on U.S. operators is estimated to be \$34,920, or \$120 per airplane.

Replacement of the elevator servo controls would take approximately 7 work hours at an average labor rate of \$60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the replacement of the elevator servo controls proposed by this AD on U.S. operators is estimated to be \$122,220, or \$420 per airplane.

Change of the elevator neutral setting would take approximately 12 work hours at an average labor rate of \$60 per work hour. There would be no charge for required parts. Based on these figures, the cost impact of the replacement of the change of the elevator neutral setting proposed by this AD on U.S. operators is estimated to be \$209,520, or \$720 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

#### Regulatory Impact

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

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

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

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-8177 (57 FR

6068, February 20, 1992), and by adding a new airworthiness directive (AD), to read as follows:

**Airbus Industrie:** Docket 2000–NM–342–AD. Supersedes AD 92–04–06, Amendment 39–8177.

*Applicability:* All Model A319, A320, and A321 series airplanes; certificated in any category.

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

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

To prevent excessive vibration of the elevators, which could result in reduced structural integrity, leading to reduced controllability of the airplane, accomplish the following:

#### Inspection

(a) Within 18 months from the last inspection for excessive freeplay or within 3 months after the effective date of this AD, whichever occurs later: Inspect the elevators for excessive freeplay, using a load application tool and a spring scale assembly, in accordance with Airbus A319/A320 Aircraft Maintenance Manual (AMM) Task 27–34–00–200–001, including all changes through August 1, 2000. Thereafter, repeat the inspection at intervals not to exceed 18 months.

#### Repair

(b) If any inspection required by paragraph (a) of this AD indicates that the freeplay in the elevator exceeds 7 millimeters: Prior to further flight, repair the elevator or servo controls, in accordance with Airbus A319/A320 AMM Task 27–34–51–200–001 and/or 27–34–41–200–001, as applicable, including all changes through August 1, 2000.

#### Replacement

(c) For the airplanes listed in Airbus Service Bulletin A320–27–1111, Revision 01, dated November 14, 2000: Within 18 months after the effective date of this AD, replace the elevator servo controls with modified elevator servo controls, in accordance with Airbus Service Bulletin A320–27–1111, dated August 16, 1996; or Revision 01, dated November 14, 2000.

(d) For the airplanes listed in Airbus Service Bulletin A320–27–1114, Revision 04, dated December 7, 1999: Within 18 months after the effective date of this AD, shift the elevator neutral setting to minus 0.5 degrees, nose-up, in accordance with Airbus Service Bulletin A320–27–1114, Revision 04, dated December 7, 1999.

#### Alternative Methods of Compliance

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

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

#### Special Flight Permits

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

Issued in Renton, Washington, on February 22, 2001.

**Donald L. Riggan,**

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

[FR Doc. 01–4934 Filed 2–28–01; 8:45 am]

**BILLING CODE 4910–13–U**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 432

#### Trade Regulation Rule Relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice to reopen comment period.

**SUMMARY:** On December 22, 2000, the Federal Trade Commission (the “Commission”) commenced a rulemaking proceeding and requested public comments on a supplemental notice of proposed rulemaking to amend its Rule relating to Power Output Claims for Amplifiers Utilized in Home Entertainment Products (the “Amplifier Rule”). The Commission solicited comments until February 23, 2001. In response to a request from an industry trade association, the Commission reopens the comment period until March 30, 2001.

**DATES:** Written comments will be accepted until March 30, 2001.

**ADDRESSES:** Written comments should be submitted to Office of the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Comments should be identified as “16 CFR Part 432 Comment—Amplifier Rule.” If

possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identify the format and version used). Written comments should be submitted, when feasible and not burdensome, in five copies.

**FOR FURTHER INFORMATION CONTACT:** Dennis Murphy, Economist, Division of Consumer Protection, Bureau of Economics, (202) 326–3524, or Neil Blickman, Attorney, Division of Enforcement, Bureau of Consumer Protection, (202) 326–3038, Federal Trade Commission, Washington, DC 20580.

#### SUPPLEMENTARY INFORMATION:

On December 22, 2000, the Commission published in the **Federal Register** a request for public comments on a supplemental notice of proposed rulemaking to amend its Amplifier Rule, 16 CFR part 432 (65 FR 80798). The Amplifier Rule was promulgated on May 3, 1974 (39 FR 15387), to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. Specifically, the **Federal Register** notice solicited public comments on Commission proposals to amend the Amplifier Rule’s testing procedures to provide appropriate power output ratings for the recently introduced class of “home theater” receivers that incorporate five or more channels of amplification. Pursuant to the **Federal Register** notice, the comment period on the supplemental notice of proposed rulemaking ended on February 23, 2001.

On February 13, 2001, the Commission staff received a request for an extension of the comment period from the Consumer Electronics Association (“CEA”). CEA has indicated that additional time is required so that it can conduct consumer research and industry surveys, which it asserts will be useful in preparing thorough, thoughtful responses to the proposals and questions contained in the **Federal Register** notice.

The Commission is aware that the issues raised by the **Federal Register** notice are complex and technical. Accordingly, to provide sufficient time for interested parties to prepare useful comments, the Commission has decided to extend the deadline for comments on its supplemental notice of proposed rulemaking until March 30, 2001.

**Authority** 15 U.S.C. 41–58.

**List of Subjects in 16 CFR Part 432**

Amplifiers, Home entertainment products, Trade practices.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 01-4974 Filed 2-28-01; 8:45 am]

**BILLING CODE 6750-01-M**

**NATIONAL INDIAN GAMING COMMISSION****25 CFR Part 542****Minimum Internal Control Standards**

**AGENCY:** National Indian Gaming Commission.

**ACTION:** Advance notice of proposed rulemaking; Notice of extension of time.

**SUMMARY:** On November 27, 2000, the National Indian Gaming Commission (Commission) issued an advance notice of proposed rulemaking (65 FR 70673, November 27, 2000) proposing to revise its regulations establishing minimum internal control standards (MICS) for gaming operations on Indian land. The date for filing comments is being extended.

**DATES:** Comments shall be filed on or before March 30, 2001.

**ADDRESSES:** Comments may be mailed to Minimum Internal Control Standards, First Revision Comments, National Indian Gaming Commission, Suite 9100, 1441 L Street, NW., Washington, DC 20005. Fax number: 202-632-7066 (not a toll-free number). Public comments may be delivered or inspected from 9 a.m. until noon and from 2 p.m. to 5 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Joe H. Smith at 503-326-7050, or by facsimile at 503-326-5092 (not a toll free number).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA), 25 U.S.C. 2701-2721, was signed into law on October 17, 1988, creating the Commission and establishing a comprehensive system for regulating gambling activities on Indian lands. Following a thorough rulemaking process, that included a tribal advisory committee and public hearings, the Commission determined that minimum internal control standards were needed to ensure the integrity of gaming on Indian lands and to safeguard this source of tribal revenues. On January 5, 1999, the Commission published its Minimum Internal Control Standards, 25 CFR Part 542. In developing the MICS, the Commission anticipated that

the regulation would be subject to periodic revision to maintain consistency with evolving technology and sound practice in the gaming industry. The Commission recognized the importance of ensuring that tribal gaming operations were not locked into internal control systems that contained unworkable requirements or that laced those operations at a competitive disadvantage. Overall, implementation of the MICS has had a positive impact on the ability of tribal oversight officials and the Commission to identify potential threats to the integrity of Indian gaming operations. As anticipated, however, in the period since publication of the MICS, there have been changes in Indian gaming and gaming technology that may need to be reflected in the MICS. Additionally, as gaming tribes and the Commission have gained practical experience with the MICS, it has become apparent that there are some technical errors in the regulation and that some of the standards themselves may not be operating as the Commission has intended.

**Montie R. Deer,**

*Chairman, National Indian Gaming Commission.*

[FR Doc. 01-4971 Filed 2-28-01; 8:45 am]

**BILLING CODE 7565-01-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[REG-106030-98]

RIN 1545-AW50

**Source of Income from Certain Space and Ocean Activities; Also, Source of Communications Income; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Change of date of public hearing; extension of time to submit outlines of oral comments.

**SUMMARY:** This document changes the date of the public hearing on the proposed regulations under section 863(d) governing the source of income from certain space and ocean activities. It also extends the time to submit outlines of oral comments for the hearing.

**DATES:** The public hearing will be held May 23, 2001, beginning at 10 a.m. Additional outlines of oral comments must be received by May 2, 2001.

**ADDRESSES:** The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: Regulations Unit CC (REG-106030-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: Regulations Unit CC (REG-106030-98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit outlines of oral comments electronically directly to the IRS Internet site at <http://www.irs.gov/taxregs/reglist.html>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Anne Shelburne, (202) 874-1490; concerning submission, LaNita Van Dyke, (202) 622-7190 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****Background**

A notice of proposed rulemaking and notice of public hearing, appearing in the **Federal Register** on Wednesday, January 17, 2001 (66 FR 3903), announced that a public hearing on the proposed regulations under section 863(d) governing the source of income from certain space and ocean activities would be held on March 28, 2001, in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has changed to May 23, 2001, at 10 a.m. in room 2615. Outlines of oral comments must be received by May 2, 2001.

**Cynthia Grigsby,**

*Chief, Regulations Unit, Office of Special Counsel (Modernization & Strategic Planning).*

[FR Doc. 01-4924 Filed 2-28-01; 8:45 am]

**BILLING CODE 4830-01-P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 70 and 71**

[FRL-6934-6]

RIN 2060-AJ04

**State and Federal Operating Permits Programs: Amendments to Compliance Certification Requirements**

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

**ACTION:** Proposed rule.

**SUMMARY:** We, the EPA, are proposing to amend the State Operating Permits

Program and the Federal Operating Permits Program. The amendments are in response to the United States Circuit Court of Appeals October 29, 1999, decision to remand to us part of the October 22, 1997, Compliance Assurance Monitoring rulemaking that included revisions describing the ongoing compliance certification content requirements. In particular, the Court ruled that the compliance certification must address whether the affected facility or source has been in continuous or intermittent compliance. This action will revise only certain sections to carry through the revisions to the compliance certification requirements. We believe this proposed amendment will not affect the stringency of the existing standards. We do not consider this amendment controversial and expect no negative comments, so we are also publishing it as a direct final rule without prior proposal in the Final Rules section of this **Federal Register** publication. We have set forth and detailed rationale for this approval in the direct final rule. We will consider any negative comments about today's direct final rule to also be negative comments about this proposal. We will take no further action unless, within the time allowed (see **DATES**), we receive negative comments about the proposal or final rule, or we receive a request for a public hearing on the proposal. If we receive no adverse comments, we contemplate no further action on this proposal. We will not institute a second comment period on this action. People interested in commenting on the direct final rule should do so at this time.

**DATES:** Comments. We will accept comments regarding the proposed amendment on or before April 2, 2001. We will arrange a public hearing concerning the accompanying proposed rule if we receive a request for one by March 16, 2001. If someone requests a hearing it will be held on April 16, 2001 beginning at 10 a.m. For more information about submittal of comments and requesting a public hearing, see the **SUPPLEMENTARY INFORMATION** section in this preamble.

**ADDRESSES:** Comments. Interested parties having comments on this action may submit these comments in writing (original and two copies, if possible) to Docket No. A-91-52 at the following address: Air and Radiation Docket and Information Center (6102), US Environmental Protection Agency, 401 M Street, SW., Room 1500, Washington, DC 20460. We request that a separate copy of the comments also be sent to the

contact person listed in the following paragraph of this preamble.

If someone requests a hearing, the hearing will be held at the EPA Office of Administration Auditorium, Research Triangle Park, NC.

**FOR FURTHER INFORMATION CONTACT:** Peter Westlin, Environmental Protection Agency, Office Air Quality Planning and Standards, at 919/541-1058, e-mail: [westlin.peter@epa.gov](mailto:westlin.peter@epa.gov), facsimile 919/541-1039.

**SUPPLEMENTARY INFORMATION:** Regulated entities. The requirements in this proposed regulation may apply to you if you own or operate any facility subject to the compliance certification requirements of part 70 or 71. These proposed regulations apply to, but are not limited to, owners or operators of all sources who must have operating permits under either of these programs. State, local, and tribal governments are potentially affected to the extent that those governments must revise existing compliance certification requirements in implementing the part 70 operating permits program to make consistent with these revisions.

Internet. The text of this **Federal Register** document is also available on our web site on the Internet under the Recently Signed Rules category at the following address: <http://www.epa.gov/ttn/oarpg/rules.html> and the OAQPS, Emissions Measurement Center website at <http://www.epa.gov/ttn/emc/>. Our Office of Air and Radiation (OAR) homepage on the Internet also contains a wide range of information on the air toxics program and many other air pollution programs and issues. The OAR's homepage address is: <http://www.epa.gov/oar>.

Electronic Access and Filing Addresses. The official record for this rulemaking, as well as the public version, has been established for this rulemaking under Docket No. A-91-52 (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from 8 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the address listed in the **ADDRESSES** section at the beginning of this preamble. You may submit comments on this rulemaking electronically to the EPA's Air and Radiation Docket and Information Center at their address: *A-and-R-Docket@epa.gov*. Electronic comments must be submitted as an ASCII file

avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 6.1 file format or ASCII file format. You must identify all comments and data in electronic form by the docket number (A-91-52). You should not submit CBI through electronic mail. You may file electronic comments online at many Federal Depository Libraries.

Docket. Docket A-91-52 contains the supporting information for the original NESHAP and this action. This **Federal Register** document and other materials related to this proposed rule are available for review in the docket. The docket is available for public inspection and copying at the EPA's docket office located at the above address in Room M-1500, Waterside Mall (ground floor). The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Air Docket Office at (202) 260-7548. A reasonable fee may be charged for copying docket materials.

Outline. The information in this preamble is organized as follows:

- I. Authority
- II. Background
  - A. Regulatory and litigation background
  - B. Direction from Court
- III. Regulatory Revisions and Effects
  - A. What are the regulatory revisions?
  - B. What must I include in the compliance certification?
- IV. Administrative Requirements
  - A. Executive Order 12866: "Significant Regulatory Action Determination"
  - B. Regulatory Flexibility
  - C. Paperwork Reduction Act
  - D. Unfunded Mandates Reform Act
  - E. Docket
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  - H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - I. Submission to Congress and the General Accounting Office
  - J. National Technology Transfer and Advancement Act

#### I. Authority

The statutory authority for this action is provided by sections 114 and 501 through 507 of the Clean Air Act, as amended (42 U.S.C. 7414a and 7661-7661f).

#### II. Background

##### *A. Regulatory and Litigation Background*

On October 22, 1997 (62 FR 54900), we published the final part 64, Compliance Assurance Monitoring (CAM) rule, and revisions to parts 70 and 71, the State and Federal Operating

Permits Programs. Part 64 included procedures, design specifications, and performance criteria intended to satisfy, in part, the enhanced monitoring requirements of the Clean Air Act (the Act). The revisions to parts 70 and 71 included language to §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B) specifying the minimum information necessary for the compliance certification required of responsible officials.

Subsequent to that publication, the Natural Resources Defense Council, Inc. (NRDC) and the Appalachian Power Company et al. (industry) filed petitions with the United States Court of Appeals for the District of Columbia Circuit (Court) challenging several aspects of the CAM rule. Industry challenged our authority to promulgate the parts 70 and 71 language requiring that compliance certifications be based on any other material information including credible evidence.

The NRDC argued that the monitoring in part 64 failed to meet requirements of the Act regarding enhanced monitoring and that the parts 70 and 71 revisions were inconsistent with the Act's explicit requirement that compliance certifications indicate whether compliance is continuous or intermittent.

#### B. Direction From Court

On October 29, 1999, the Court issued its decision (see docket A-91-52, item VIII-A-1) *Natural Resources Defense Council v. EPA*, 194 F.3d 130 (D.C. Cir. 1999) on these challenges. Most importantly, the court held that "EPA's adoption of CAM as 'enhanced monitoring' meets the requirements of the Clean Air Act." *Id.* at 137. The court also dismissed the industry's challenge as unripe relying on its earlier decision involving EPA's Credible Evidence Rule. See *Clean Air Implementation Project v. EPA*, 150 F.3d 1200 (D.C. Cir. 1998). The court did, however, agree with NRDC that EPA's removal from parts 70 and 71 of the explicit requirement that compliance certifications address whether compliance is continuous or intermittent ran contrary to the statutory requirement that each source must certify "whether compliance is continuous or intermittent \* \* \*" See § 114(a)(3)(D), 42 U.S.C. 7414(a)(3)(D). Our rationale for revising the compliance certification language had been that so long as the compliance certification addressed the substance of whether compliance had been continuous or intermittent there was no need to require responsible officials to use the terms "continuous" or "intermittent." The court disagreed

finding Congress' intent to be "express and unambiguous." 194 F.3d at 138. Accordingly, the court remanded that portion of the CAM rule "pertaining to 'continuous or intermittent' compliance certification" to us for revision consistent with the court's decision.

### III. Regulatory Revisions and Effects

#### A. What are the Regulatory Revisions?

In response to the court's remand, we have added text to sections, §§ 70.6(c)(5)(iii)(B) and 71.6(c)(5)(iii)(B), to require that the responsible official for the affected facility include in the annual (or more frequent) compliance certification whether compliance during the period was continuous or intermittent. Specifically, the revised text, including the introductory language for both sections reads: "Permits shall include each of the following \* \* \*: A requirement that the compliance certification include all of the following \* \* \*: The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the method or means designated in paragraph (c)(5)(iii)(B) of this section." The italicized text indicates the revisions made in response to the Court decision. Other text within both of these sections remains as promulgated in 1997. Under this revised language, the responsible official must include in the compliance certification a statement as to whether compliance during the period was continuous or intermittent. We believe these revisions respond directly and adequately to the Court's decision to remand the compliance certification requirements to us and are consistent with the requirements of the Act.

The Court's decision and this amendment to our regulations also necessitate a change to a guidance document issued in connection with the CAM rulemaking. In "Compliance Assurance Monitoring Rule Implementation Questions and Responses" (from Steve Hite, OPG-ITPID) to APMs, Regions I-X (January 8, 1998)), EPA advised permitting authorities that they could require sources to certify compliance using either existing state regulations that tracked the statute (e.g., certify to whether compliance was continuous or intermittent) or the certification language in the CAM revisions to Part 70. See at Question 10. This guidance was based on EPA's interpretation that (1) the statutory requirement to certify

whether compliance is continuous or intermittent had sufficient flexibility to allow the approach taken in the CAM revisions to Part 70 and (2) the state regulations on compliance certification generally tracked exactly the statutory language on certification of continuous or intermittent compliance. The Court, however, disagreed with EPA's interpretation of the statutory language and remanded the revisions to Part 70 to EPA. As a result, the guidance above is no longer justified. Accordingly, EPA withdraws the guidance provided to permitting authorities in Question and Response 10 in the above-mentioned guidance to the extent it states that permitting authorities may allow certifications based on the Part 70 revisions set aside by the Court. EPA is aware that most if not all approved state program regulations continue to require responsible officials to certify whether compliance was intermittent or continuous. Accordingly, any state programs that followed the interpretation in Question 10 above should be able to expeditiously require certifications to be based upon the proper statutory certification language.

#### B. What Must I Include in the Compliance Certification?

The compliance certification is your assessment, signed by your facility's responsible official, as to whether your facility complied with the terms and conditions of the permit. The compliance certification includes three main elements. The first is identification of all the permit terms and conditions to which your facility is subject. These include applicable design provisions, work practice elements, required operating conditions, and emissions limitations in addition to general and specific monitoring, reporting, and record keeping requirements.

Second, you must identify the method(s) and any other material information used to determine compliance status of each term and condition. The method(s) includes at a minimum any testing and monitoring methods required by Parts 70 or 71 that were conducted during the period for the certification. You must describe whether the data collection using the methods referenced for the compliance certification provide continuous or intermittent data.

Third, you must certify as to the status of compliance including whether compliance was continuous or intermittent. You must base this status on the results of the identified methods and other material information. You must note as possible exceptions to

compliance any deviations from the permit requirements and any excursions, or exceedances as defined in part 64, or other underlying applicable requirements, during which compliance is required.

You can find additional explanation on our interpretation of a certification of continuous or intermittent compliance in the preamble to the final CAM rule. 62 FR 54937

#### IV. Administrative Requirements

##### A. Executive Order 12866: "Significant Regulatory Action Determination"

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed amendment would be significantly less than \$100 million and would not meet any of the other criteria specified in the Executive Order, we have determined that this action is not a "significant regulatory action" under the terms of Executive Order 12866, and is therefore not subject to OMB review. Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, in consideration of the very limited scope of this amendment, we consider 30 days to be sufficient in providing a meaningful public comment period for this rulemaking.

##### B. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment

rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. We determined that these amendments to the parts 70 and 71 do not have a significant impact on a substantial number of small entities. We intended that compliance with the CAM rule would provide monitoring information sufficient to demonstrate whether compliance was continuous or intermittent. Even though we did not require that the responsible official use those terms in the revisions to the compliance certification, we did require that the responsible official rely on the monitoring information in making that certification. That the court held that the responsible official must address explicitly whether compliance was continuous or intermittent does not substantively change the monitoring responsibilities or economic impact. The revisions to parts 70 and 71 in this action add no burden on responsible officials other than to categorize their compliance status as continuous or intermittent. We have determined that a regulatory flexibility analysis is not necessary in connection with this action.

##### C. Paperwork Reduction Act

This amendment does not include or create any information collection activities subject to the Paperwork Reduction Act, and therefore we will submit no information collection request (ICR) to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

##### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of the UMRA requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives

of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. That plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this amendment is of very narrow scope, and provides a compliance alternative very similar to one already available in the promulgated part 70 compliance certification requirements. We have determined that this action contains no regulatory requirements that might significantly or uniquely affect small governments. We have also determined that this action does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA.

##### E. Docket

The docket includes an organized and complete file of all the information upon which we relied in taking this action. The docketing system is intended to allow you to identify and locate documents readily so that you can participate effectively in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, except for certain interagency documents, will serve as the record for judicial review. (See CAA section 307(d)(7)(A).)

##### F. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action does not create a mandate on State, local or tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 applies to any rule that the EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. These amendments to the State and Federal operating permits program are not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action as defined

by E.O. 12866, and the amendments do not address an environmental health or safety risk that would have a disproportionate effect on children.

*H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget, in a separate identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." These amendments to parts 70 and 71 do not significantly or uniquely affect the communities of Indian tribal governments. The amendments to the rule do not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

*J. National Technology Transfer and Advancement Act*

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104-113 (March 7, 1996), we are required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are adopted by voluntary consensus standard bodies. Where we do not use available and potentially applicable voluntary consensus standards, the NTTA requires us to provide Congress, through OMB,

an explanation of the reasons for not using such standards. This action does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Parts 70 and 71**

Environmental protection, Air pollution control, Reporting and recordkeeping requirements.

Dated: January 12, 2001.

**Carol M. Browner,**  
Administrator.

[FR Doc. 01-4976 Filed 2-28-01; 8:45 am]

**BILLING CODE 6560-50-P**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

[DA 01-445; MM Docket No. 99-233; RM-9662 & RM-9828]

**Radio Broadcasting Services; Graham, TX**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** Graham Tollway Broadcasting Company proposed the allotment of Channel 253A at Graham, Texas. See 64 FR 36322, July 6, 1999. The proposal for Graham has been withdrawn with no other interest expressed in an allotment at Graham. A counterproposal was filed by North Texas Radio Group, L.P., proposing changes at Bridgeport, Bonham, Palestine, Price, Range and Stephenville, Texas and Ardmore, Lawton, Tecumseh and Fort Towson, Oklahoma (RM-9828). Although the counterproposal was placed on public notice, it was found to be technically unacceptable and has been dismissed. Therefore, the petition and counterproposal have been dismissed, with no action taken with respect to the above-listed communities.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99-233, adopted February 7, 2001, and released February 16, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy

contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857-3800, facsimile (202) 857-3805.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-4919 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-398; MM Docket No. 01-47; RM-10063]

#### Radio Broadcasting Services; Valley Mills, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition for rule making filed by Valley Mills Radio Broadcasting Company seeking the allotment of Channel 237C2 at Valley Mills, TX, as the community's first local aural service. Channel 237C2 can be allotted to Valley Mills in compliance with the Commission's minimum distance separation requirements with a site restriction of 27.8 kilometers (17.3 miles) west, at coordinates 31-44-52 NL; 97-44-33 WL, to avoid a short-spacing to proposed Channel 236C2 at Caldwell, TX.

**DATES:** Comments must be filed on or before April 9, 2001, and reply comments on or before April 24, 2001.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitkin, L.C., 908 King Street, Suite 300, Alexandria, VA 22314 (Counsel to petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-47; adopted February 7, 2001 and released February 16, 2001. 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. The complete text of

this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Valley Mills, Channel 237C2.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-4917 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 01-399; MM Docket No. 01-48; RM-10062]

#### Radio Broadcasting Services; Junction City, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition for rule making filed by Bishop Community Radio, Inc., seeking the allotment of Channel 295A to Junction City, MO, as its first local aural service. Petitioner is requested to provide a showing demonstrating that

Junction City possesses the customary factors normally associated with community status. Channel 295A can be allotted to Junction City in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.2 kilometers (5.7 miles) northeast, at coordinates 37-37-33 NL; 90-12-18 WL, to avoid a short-spacing to Station KAUL, Channel 294A, Ellington, MO.

**DATES:** Comments must be filed on or before April 9, 2001, and reply comments on or before April 24, 2001.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Randall Eugene Spence, President/CEO, Bishop Community Radio, Inc., 5918 Fleming Drive, Evansville, IN 47711 (Petitioner).

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-48; adopted February 7, 2001 and released February 16, 2001. 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. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

**PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Junction City, Channel 295A.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 01-4916 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-P**

**FEDERAL COMMUNICATIONS COMMISSION****47 CFR Part 73**

[DA 01-417, MM Docket No. 01-53, RM-10040]

**Television Broadcast Service; Galesburg, IL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by Northwest Television, Inc., an applicant for a construction permit for a new TV station on channel 67 at Galesburg, Illinois, requesting the substitution of channel 53 for channel 67 at Galesburg. TV Channel 53 can be allotted to Galesburg, Illinois, in compliance with the of section 73.623(d) of the Commission's Rules with a zero offset at

reference coordinates (41-18-45 W. and 90-22-45 N.). We will not accept competing expressions of interest in the use of television channel 53 at Galesburg pursuant to the provisions outlined in the Commission's Public Notice, released November 22, 1999, DA 99-2605.

**DATES:** Comments must be filed on or before April 16, 2001, and reply comments on or before May 1, 2001.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: George R. Borsari, Jr., Anne Thomas Paxson, Borsari & Paxson, 2021 L Street, NW., Suite 402, Washington, DC 20036 (Counsel for Northwest Television, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-53, adopted February 20, 2001, and released February 21, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

**PART 73—TELEVISION BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, and 336.

**§ 73.606 [Amended]**

2. Section 73.606(b), the Table of Television Allotments under Illinois is amended by removing TV Channel 67 and adding TV Channel 53 at Galesburg.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 01-4912 Filed 2-28-01; 8:45 am]

**BILLING CODE 6712-01-U**

# Notices

Federal Register

Vol. 66, No. 41

Thursday, March 1, 2001

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### Board for International Food and Agricultural Development

#### One Hundred and Thirty Fourth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-fourth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8:30 a.m. to 4:30 p.m. on March 29th, 2001 and from 8:30 a.m. to 1:30 p.m. on March 30th, 2001, in the NASULGC Meeting Room, 1307 New York Avenue, NW, Washington, DC.

The first day will be devoted to a joint session with the CRSPs (Collaborative Research Support Programs—consortia of universities and international research entities devoted to agricultural commodity or theme research). The second day focuses on the future of university-government partnerships on international agriculture, and on visions for BIFAD itself.

Those wishing to attend the meeting to obtain additional information about BIFAD should contact Mr. Lawrence Paulson, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11-073, Washington DC, 20523-2110 or telephone him at (202) 712-1436 or fax (202) 216-3010.

#### Lawrence Paulson,

*USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Economic, Growth Center, Bureau for Global Programs.*

[FR Doc. 01-4988 Filed 2-28-01; 8:45 am]

BILLING CODE 6116-01-M

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Census Quality Survey to Evaluate Responses to the Census 2000 Question on Race

*Form Number(s):* CQS-1A, CQS-1B, CQS-1A(E), CQS-1B(E), CQS-1A(E)SUPP, CQS-1B(E)SUPP, CQS-6, CQS-7(L), CQS-8(L), CQS-1A(F), CQS-1B(F).

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 20,833 hours.

*Number of Respondents:* 50,000.

*Avg Hours Per Response:* Initial response—10 minutes; telephone recontact—15 minutes.

*Needs and Uses:* The Census Bureau requests authorization from the Office of Management and Budget (OMB) to conduct the Census Quality Survey to Evaluate Responses to the Census 2000 Question on Race. The proposed survey is the principal vehicle for evaluating fundamental changes to the questions on race and Hispanic origin used in Census 2000. This survey is critical to implementing the OMB guidance on Aggregate and Allocation of Data on Race for Use in Civil Rights Monitoring and Enforcement. On October 30, 1997, the OMB issued revised standards by which all federal agencies, beginning with Census 2000, are to collect, tabulate, and present data on race and ethnicity. Included in these standards was the identification of a minimum of five racial categories—White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander. For the 1990 Census the 16 separate response categories collapsed into a minimum of four racial categories consistent with the 1977 OMB guidance: White; Black; American Indian or Alaskan Native; and Asian or Pacific Islander. The standards also included changes in the terminology used for each group and the sequencing of the questions on race and Hispanic origin. In the 1990 Census, the question on race preceded the question on Hispanic

origin with two intervening questions. For Census 2000, the question on Hispanic origin is immediately before the question on race with a note to respondents to answer both questions. The most profound change to the standards was that of allowing respondents to report one or more races if they chose to do so. Some of the impetus for the OMB change to allow the reporting of one or more races came from the increasing number of interracial marriages and births to parents of different races in the past 25 to 35 years. For governmental, non-governmental, and private sector data users, there is a need to understand how the Census 2000 race distributions compare to race distributions from previous censuses, current surveys and other data collection procedures where respondents were instructed to report only one race. The survey also will include three questions to reinforce the idea that we are interested in improving census quality and how the Census might conduct the next census.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 U.S.C., Sections 141 and 193.

*OMB Desk Officer:* Susan Schechter, (202) 395-5103.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, room 6086, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at [mclayton@doc.gov](mailto:mclayton@doc.gov)).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: February 26, 2001.

#### Madeleine Clayton,

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-5011 Filed 2-28-01; 8:45 am]

BILLING CODE 3510-07-P

**DEPARTMENT OF COMMERCE****International Trade Administration****Proposed Collection; Comment Request; BISNIS FinanceLink**

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 30, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, (202) 482-3129, Department of Commerce, Room 6086, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at Mclayton@doc.gov.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Trevor Gunn, RRB, Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; phone (202) 482-4655, fax (202) 482-2293.

**SUPPLEMENTARY INFORMATION:****I. Abstract**

The International Trade Administration's Business Information Service for the Newly Independent States offers business intelligence and counseling to U.S. companies seeking to export or invest in the countries of the former Soviet Union. One of the essential components of BISNIS's services is assisting companies in locating suitable financing for exports. Often, official sources, such as the Export-Import Bank of the United States, cannot handle all requests for a variety of reasons. FinanceLink is an internet-based service to facilitate contact between exporters and financing agencies. Exporters fill out a form giving relevant details about the desired transaction and submit it via Internet to BISNIS; BISNIS will, in turn, distribute the information collected to potential financing agencies. The intention is to provide a service that benefits both exporters and financing agencies.

**II. Method of Collection**

The request is sent via Internet to Department of Commerce, BISNIS Information Service for the Newly Independent States, Trade Finance Specialist.

**III. Data**

*OMB Number:* 0625-0231.

*Form Number:* N/A.

*Type of Review:* Regular submission.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 200.

*Estimated Time per Response:* 12 minutes.

*Estimated Total Annual Burden*

*Hours:* 34 hours.

*Estimated Total Annual Cost:* \$1155—no capital costs are required.

**IV. Requested for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 26, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-5010 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-DA-P**

Avenue, NW., Washington, DC 20230; telephone: (202) 482-1374.

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (2000).

**Background**

Based on timely requests by petitioners and respondents in both proceedings, the Department published its initiation of this antidumping duty administrative review covering the period of August 1, 1999 through July 31, 2000 (65 FR 58733) on October 2, 2000.

**Extension of Time Limits for Preliminary Results**

Due to the complex issues involved with this case, we find that it is not practicable to make a preliminary determination by the current deadline of May 3, 2001. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limits for the preliminary results for 120 days, until no later than August 31, 2001.

Dated: February 23, 2001.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 01-5016 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-122-822, A-122-823]

**Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Abdelali Elouaradia, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-357-812, A-570-863]

**Honey From Argentina and the People's Republic of China: Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Postponement of Preliminary Antidumping Duty Determinations.

**SUMMARY:** The Department of Commerce (the Department) is postponing the preliminary determinations of the antidumping duty investigations on

honey from Argentina and the People's Republic of China (the PRC). These investigations cover manufacturers and exporters of the subject merchandise to the United States during the period July 1, 1999 through June 30, 2000, for Argentina, and during the period January 1, 2000 through June 30, 2000, for the PRC. As a result of this extension, the deadline for issuing the preliminary determinations in these investigations is now May 4, 2001.

**EFFECTIVE DATE:** March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Blackledge (Argentina) at (202) 482-3518, Angelica Mendoza (the PRC) at (202) 482-3019, or Charles Rast at (202) 482-1324 and Donna Kinsella at (202) 482-0194; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 26, 2000, the Department initiated antidumping duty investigations of honey from Argentina and the PRC for the period July 1, 1999 through June 30, 2000, for Argentina, and the period January 1, 2000 through June 30, 2000, for the PRC. (*See* Initiation of Antidumping Duty Investigations: Honey From Argentina and the People's Republic of China, 65 FR 65831-65834 (November 2, 2000).) The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation, unless this deadline is extended.

**Postponement of Preliminary Determinations**

Pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.205(e), on February 14, 2001, the petitioners filed a request that the Department postpone the honey determinations for Argentina and the PRC. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request.

Therefore, in accordance with section 733(c)(1)(A) of the Act, the Department is postponing the deadline for issuing the preliminary determinations of the aforementioned investigations until May 4, 2001.

This notice is published pursuant to section 733(c)(2) of the Tariff Act of 1930, as amended, and 19 CFR 351.205(f). Richard W. Moreland is temporarily fulfilling the duties of the

Assistant Secretary for Import Administration.

Dated: February 22, 2001.

**Richard W. Moreland,**

*Deputy Assistant Secretary, Import Administration.*

[FR Doc. 01-5015 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-580-825]**

**Oil Country Tubular Goods From the Republic of Korea; Initiation of Changed Circumstances Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Initiation of Changed Circumstances Antidumping Duty Administrative Review.

**SUMMARY:** In response to a letter from Hyundai Pipe Co., Ltd. ("HDP") notifying the Department of Commerce that its corporate name would be changing to Hyundai Steel Company ("Hyundai Hysco"), the Department of Commerce is initiating a changed circumstances administrative review of the antidumping duty order on oil country tubular goods from the Republic of Korea (*see Antidumping Duty Order: Oil Country Tubular Goods from the Republic of Korea* ("Korea"), 60 FR 41057, August 11, 1995).

**EFFECTIVE DATE:** March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Mike Strollo or Scott Lindsay, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-5255 and (202) 482-3782, respectively.

**Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended ("the Act"), by the Uruguay Round Agreements Act.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 5, 2001, a respondent in the original investigation of this proceeding, HDP, notified the Department of Commerce ("the Department") that as of February 1, 2001, its corporate name would change

to Hyundai Hysco. HDP stated that the corporate structure would not change, and that all owners, management, production facilities, suppliers and customers will also remain the same. HDP provided documentation to support this claim, consisting of an official announcement and a press article noting the name change.

On February 9, 2001, HDP submitted supplementary information documenting the nature of the name change including, *inter alia*, relevant notes from the most recent financial statement, minutes of a shareholders' meeting, customer lists, and organizational charts under both names, which are identical.

**Scope of the Review**

The products covered by this order are oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS item numbers are provided for convenience and Customs purposes, the written description remains dispositive of the scope of this review.

### Initiation of Antidumping Duty Changed-Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, the following changes: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*).

The information submitted by HDP shows changed circumstances sufficient to warrant a review under 19 CFR 351.216. Although HDP did not request a changed circumstances review, we consider that, in order to determine whether Hyundai Hysco is a successor-in-interest to HDP, which was the company originally investigated, we must conduct a changed circumstances review. Therefore, we are initiating a changed circumstances antidumping duty administrative review pursuant to section 751(b)(1) of the Act to determine whether Hyundai Hysco as manufacturer or exporter should be excluded from the antidumping duty order as HDP is.

We will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. As per 351.221(b)(4), interested parties will have an opportunity to comment. The Department will issue its final results of review in accordance with the time limitations set forth in 19 CFR 351.216(e). All written comments must be submitted to the Department and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

During the course of this changed circumstances review, we will not change any cash deposit instructions on the merchandise subject to this changed circumstances review, unless a change is determined to be warranted pursuant to the final results of this review.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.221.

Dated: February 23, 2001.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 01-5013 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-201-504]

#### Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On October 24, 2000, the Department of Commerce published the preliminary results of the thirteenth administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico. The review covers two manufacturers/exporters. The period of review is December 1, 1998, through November 30, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** March 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Dinah McDougall or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-3773 or (202) 482-4007, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

### Background

The review covers two manufacturers/exporters, Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA). The period of review (POR) is December 1, 1998, through November 30, 1999.

On October 24, 2000, the Department published in the **Federal Register** the preliminary results of the thirteenth antidumping duty administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico (65 FR 63562). We invited parties to comment on the preliminary results of review. We received case briefs from the petitioners and respondents on November 27, 2000. We received rebuttal briefs from petitioners and respondents on December 4, 2000. We held a public hearing on December 12, 2000. We have conducted this administrative review in accordance with section 751 of the Act.

### Scope of Review

The products covered by this review are porcelain-on-steel cookware, including tea kettles, which do not have self-contained heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Bernard T. Carreau, fulfilling the duties of Assistant Secretary for Import Administration, dated February 21, 2001, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B-099 of the main Department building. In addition, a complete version of the

Decision Memo can be accessed directly on the Web at <http://ia.ita.doc.gov/>. The paper copy and electronic version of the Decision Memo are identical in content.

### Changes From the Preliminary Results

Based on our analysis of comments received, we have made certain changes to the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo, which is on file in room B-099 at the Department and available on the Web at <http://ia.ita.doc.gov/>.

### Final Results of Review

We determine that the following weighted-average margin percentages exist for the period December 1, 1998, through November 30, 1999:

Manufacturer/exporter	Margin (percent)
Cinsa .....	10.39
ENASA .....	17.69

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each importer's entries under the relevant order during the review period.

### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of porcelain-on-steel cookware from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Cinsa and ENASA will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 29.52. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: February 21, 2001.

**Timothy J. Hauser,**

*Acting Under Secretary for International Trade.*

### Appendix—List of Issues

1. Use of Partial Adverse Facts Available
2. Use of an Adverse Inference
3. Selection of the Adverse Facts Available Rate
4. Adjustment of Enamel Frit Prices
5. Calculation of General and Administrative Expenses
6. Treatment of Discounts and Rebates
7. Indirect Selling Expenses
8. Calculation of CEP Profit
9. CEP Offset Adjustment
10. Clerical Errors—Application of Facts Available Margins

[FR Doc. 01-5012 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-806]

### Silicon Metal From the People's Republic of China: Notice of Rescission of New Shipper Antidumping Duty Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Rescission of New Shipper Antidumping Duty Review.

**EFFECTIVE DATE:** March 1, 2001.

**SUMMARY:** On August 16, 2000 the Department published in the **Federal Register** (65 FR 49965) a notice announcing the initiation of a new shipper review of the antidumping duty order on silicon metal from the People's Republic of China (PRC), covering Groupstars Chemical LLC for the period June 1, 1999 through May 31, 2000. This new shipper review is now being rescinded since Groupstars Chemical LLC (Groupstars Chemical) is not an exporter or producer of subject merchandise as required by 19 CFR 351.214(b)(1).

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn or Douglas Campau, AD/CVD Enforcement Group III, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-0648 and (202) 482-1395, respectively.

### SUPPLEMENTARY INFORMATION:

#### Background

On June 30, 2000, Groupstars Chemical, requested a new shipper review of the antidumping duty order on silicon metal from the PRC in accordance with 19 CFR 351.214(b). In its request, Groupstars Chemical certified that it was a producer and exporter of silicon metal. Based on this information, the Department initiated a new shipper review of this order on August 16, 2000, in accordance with 19 CFR 351.221(c)(1)(i). However, a review of information now on the record with respect to Groupstars Chemical has led us to conclude that Groupstars Chemical is not, in fact, a producer or exporter of silicon metal. Based on Groupstars Chemical's questionnaire response, the Department determined that Groupstars Chemical was only a U.S. "marketing company" and not a producer or exporter of silicon metal.

#### Rescission of Review

Since Groupstars Chemical is not an exporter or producer of silicon metal as required by 19 CFR 351.214(b)(1), the Department is hereby rescinding Groupstars Chemical's new shipper review.

This determination is issued and published in accordance with section 751 of the Tariff Act of 1930, as amended (19 U.S.C. 1675) and 19 CFR 351.214(f). Effective January 20, 2001, Bernard T. Carreau is fulfilling the duties of the Assistant Secretary for Import Administration.

Dated: January 31, 2001.

**Bernard T. Carreau,**

*Deputy Assistant Secretary, AD/CVD  
Enforcement II.*

[FR Doc. 01-5014 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 022601A]

#### Coral Reefs Economic Valuation Study

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before April 30, 2001.

**ADDRESSES:** Direct all written comments to Madeleine Clayton, Departmental Forms Clearance Officer, Department of Commerce, Room 6086, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at MClayton@doc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dr. Vernon R. Leeworthy, NOS/Special Projects Office, N/SP3, Room 9124, 1305 East-West Highway, Silver Spring, MD 20910 (phone 301-713-3000, ext. 138), or via Internet at Bob.Leeworthy@noaa.gov.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

The purpose of this data collection would be to provide information on the value of coral reef habitats to specific segments of the U.S. population. The study will measure nonmarket economic values for coral reefs. This effort is designed to provide defensible information for both resource managers and damage assessments on the value of coral reef habitats and alternative management actions. The project is designed as a phased three-year effort to ensure effective use of all the available information. This effort will involve development of extensive knowledge

about how reef habitats are perceived, implication of alternative management actions, designing original survey instruments, interviewing of a large number of respondents, conducting formal statistical analysis of the data, and developing a decision-support system for resource managers to use.

For active users of coral reefs, separate surveys of residents and visitors will be conducted to estimate the amount of use (measured in person-days) of the coral reefs, spending in the local economies while undertaking the activities on the reefs, and information that will support estimation of nonmarket economic use values using travel cost demand models, and discrete choice contingent valuation methods. For nonuse or passive use, a nationally-oriented survey will be conducted using stated preferences methods.

##### II. Method of Collection

Interviews will be conducted. The survey instruments will be formulated with the use of focus groups and a pretest of the instrument will be conducted.

##### III. Data

*OMB Number:* None.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 2,538.

*Estimated Time Per Response:* 2 hours for a focus group member, 30 minutes for a pretest, and 30 minutes for the final survey.

*Estimated Total Annual Burden Hours:* 1,400.

*Estimated Total Annual Cost to Public:* \$0.

##### IV. Request for 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 shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: February 22, 2001.

**Madeleine Clayton,**

*Departmental Forms Clearance Officer, Office of Chief Information Officer.*

[FR Doc. 01-4955 Filed 2-28-01; 8:45 am]

**BILLING CODE 3510-JS**

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 15 March 2001 at 10 a.m., in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC, 20001-2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

The World War II Memorial sponsors will have on-site material samples for consideration by the reviewing agencies.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 23 February 2001.

**Charles H. Atherton,**  
*Secretary.*

[FR Doc. 01-4984 Filed 2-28-01; 8:45 am]

**BILLING CODE 6330-01-M**

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, March 2, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*

[FR Doc. 01-5048 Filed 2-27-01; 11:04 am]

**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, March 9, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 01-5049 Filed 2-27-01; 11:04 am]  
**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meeting**

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11:00 a.m., Friday, March 16, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 01-5050 Filed 2-27-01; 11:04 am]  
**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION****Sunshine Act Meeting; Notice**

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, March 23, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 01-5051 Filed 2-27-01; 11:04 am]  
**BILLING CODE 6351-01-M**

**COMMODITY FUTURES TRADING COMMISSION****Meeting; Sunshine Act**

**AGENCY HOLDING THE MEETING:**  
Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, March 30, 2001.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:**  
Jean A. Webb, 202-418-5100.

**Jean A. Webb,**  
*Secretary of the Commission.*  
[FR Doc. 01-5052 Filed 2-27-01; 11:04 am]  
**BILLING CODE 6351-01-M**

**DEPARTMENT OF DEFENSE****Department of the Air Force****Proposed Collection; Comment Request**

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Retiree and Transition Programs Division, Air Force Personnel Center, announces the proposed reinstatement of a 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 April 30, 2001.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Retiree and Transition Programs Division (DPPT), Air Force Personnel Center, 550 C Street West, Suite 11, ATTN: Mr. Bruce O. Creller, Randolph AFB, TX 78150-4713.

**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 Ms. Mary Stigers at 210-565-2461.

*Title, Associated Form, and OMB Number:* Air Force Instruction 36-2913, "Request for Approval of Foreign Government Employment of Air Force Members," OMB Number 0701-0134.

*Needs and Uses:* The information collection requirement is to obtain the information needed by the Secretary of the Air Force and Secretary of State on which to base a decision to approve/disapprove a request to work for a foreign government. This approval is specified by Title 37, United States Code, Section 908. This statute delegates such approval authority of Congress to the respective service secretaries and to the Secretary of the State.

*Affected Public:* Individuals and households.

*Annual Burden Hours:* 144.

*Number of Respondents:* 144.

*Responses per Respondent:* 1.

*Average Burden per Response:* 1 Hour.

*Frequency:* On occasion.

**SUPPLEMENTARY INFORMATION:****Summary of Information Collection**

Respondents are Air Force retired members and certain Reserve members who have gained jobs with a foreign government and who must obtain approval of the Secretary of the Air Force and Secretary of State to do so. Information, in the form of a letter, includes a detailed description of duty, name of employer, Social Security Number, and statements specifying whether or not the employee will be compensated; declaring if employee will be required or plans to obtain foreign citizenship; declaring that the member will not be required to execute an oath of allegiance to the foreign government; verifying that the member understands that retired pay equivalent to the amount received from the foreign government may be withheld if he or she accepts employment with a foreign government before receiving approval. Reserve members only must include a request to be reassigned to Inactive

Status List Reserve Section (Reserve Section Code RB). After verifying the status of the individual, the letter is forwarded to the Air Force Review Board for processing. If the signed letter is not included in the file, individuals reviewing the file cannot furnish the necessary information to the Secretary of the Air Force and Secretary of State on which a decision can be made. Requested information is necessary to maintain the integrity of the Request for Approval of Foreign Government Employment Program.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*  
[FR Doc. 01-4985 Filed 2-28-01; 8:45 am]

BILLING CODE 5001-05-U

## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### **Second Supplemental Record of Decision (ROD) for the Disposal of Portions of the Former Homestead Air Force Base (AFB), FL**

On January 15, 2001, the Air Force signed the Second Supplemental ROD for Portions of the Former Homestead AFB. The ROD was developed based on consideration of the December 2000 Final Supplemental Environmental Impact Statement (SEIS), correspondence received by the Air Force, and other relevant factors.

The Air Force decided in the ROD to offer approximately 717 acres of surplus property to Miami-Dade County for mixed-use development, but will not allow construction of a commercial airport at the site. The Air Force will retain the runway and airfield areas at the former base for its own use. Those areas will continue to be maintained by the Air Force and used by the Air Force Reserve, the Florida Air National Guard, Customs Service, and other federal agencies.

If the county opts not to apply for the transfer or declines the surplus property, the Air Force then will act upon a request for the property from the Department of the Interior, which hopes to trade the land for other valuable property. This transaction also would be in support of mixed-use development of the Homestead property.

This decision struck a balance between the federal interests in economic development of realigned military bases and the protection of environmental values in two nearby national parks. Although this decision is a reversal of one made by the Air Force in 1994, the new decision sought to protect the County's interests by giving

the County the first opportunity to accept the land for redevelopment. The County is the local redevelopment authority under the base closure laws, and offering the property to the County first reflects policy that local redevelopment authorities be given a central role in the determination of how base closure property is to be reused.

More details about the decision can be found in the Second Supplemental Record of Decision (ROD) for Disposal of Portions of the Former Homestead Air Force Base (AFB), Florida, which is available on request by contacting Mr. John Corradetti, Jr. Program Manager, Division A, Air Force Base Conversion Agency, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209-2809. A copy can also be viewed electronically at <http://www.denix.osd.mil/SEIS>.

**Janet A. Long,**

*Air Force Federal Register Liaison Officer.*  
[FR Doc. 01-4986 Filed 2-28-01; 8:45 am]

BILLING CODE 5001-05-U

## DELAWARE RIVER BASIN COMMISSION

### **Revised Proposed Amendment to the Delaware River Basin Commission's Water Code and Comprehensive Plan To Establish Water Usage Reporting Requirements and Proposed Amendment to the Commission's Water Metering Requirements**

**SUMMARY:** The Delaware River Basin Commission ("Commission") will hold a public hearing to receive comments on revised proposed amendments to its Water Code and Comprehensive Plan to establish water usage reporting requirements for source water withdrawals and water service and to receive comments on proposed amendments to its water metering requirements. On October 23, 2000 the Commission published on its web site a Notice of Proposed Rulemaking to establish water usage reporting requirements to ensure that the Commission has the source and service information needed to evaluate how and where water is being used in the basin. Notice also was published in the **Federal Register** on November 29, 2000 (65 FR 71094). The Commission held a public hearing on the proposed rulemaking on January 9, 2001. Today, in response to written and oral testimony, including recommendations of the Commission's Water Management Advisory Committee, substantive changes are proposed to the previously noticed amendments to the Water Code and Comprehensive Plan. The

Commission deems the changes significant enough to warrant this revised notice, a new opportunity for comment, and a second hearing before it adopts the proposed amendments. The proposal that is the subject of today's notice differs significantly from the original in that it extends the water usage reporting obligation set forth in proposed Section 2.50.3 of the Water Code to users subject to the Commission's Ground Water Protected Area Regulations for Southeastern Pennsylvania, including the owner(s) of each water supply system serving the public and each person, firm, corporation, or other entity, other than water supply systems serving the public, subject to the Ground Water Protected Area Regulations for Southeastern Pennsylvania. Minor changes to the proposed water usage reporting requirements include additional requests for data on acres irrigated (for irrigated uses only), whether water is recycled or reclaimed, and the percentages recycled or reclaimed. These data are requested only if available and only in an initial report and thereafter when changes occur. The revised proposed water usage reporting requirements differ from the original proposed requirements in one further respect. They provide that in the absence of an administrative agreement between the Commission and the state agency serving as the designated agency, the Commission shall administer and enforce the regulations. To ensure consistency, a similar revision as to administration and enforcement is proposed in Sections 2.50.1 and 2.50.2, concerning water metering requirements.

**DATES:** The public hearing will be held on Thursday, April 19, 2001 during the Commission's regular business meeting. The meeting will begin at 1 p.m. and continue until all those present who wish to testify are afforded an opportunity to do so. Persons wishing to testify at the hearing are asked to register in advance with the Commission Secretary.

The deadline for submission of written comments will be April 6, 2001.

**ADDRESSES:** The public hearing will be held at the New York City Municipal Building, One Centre Street, Building One, Room 1019, in lower Manhattan. Directions will be posted on the Commission's web site, [www.drbc.net](http://www.drbc.net), by mid-March. Written comments should be submitted to Pamela M. Bush, Delaware River Basin Commission, P.O. Box 7360, West Trenton, NJ 08628-0360.

**FOR FURTHER INFORMATION CONTACT:**

Supplemental information, including an explanation of the need for water usage reporting requirements and an account of the process by which the amendments originally were proposed, is contained in the original Notice of Proposed Rulemaking. The existing regulations, original Notice of Proposed Rulemaking and this Notice of Revised Proposed Rulemaking all are posted on the Delaware River Basin Commission web site at [www.drbc.net](http://www.drbc.net). Please contact Esther Siskind at 609-883-9500 ext. 202 with questions about the proposed amendments and Pamela M. Bush, ext. 203 with questions about the rulemaking process.

Dated: February 23, 2001.

**Pamela M. Bush,**

*Commission Secretary.*

[FR Doc. 01-4954 Filed 2-28-01; 8:45 am]

**BILLING CODE 6360-01-P**

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## DEPARTMENT OF ENERGY

### National Energy Technology Laboratory; Technology Development With Independents Financial Assistance Solicitation

**AGENCY:** National Energy Technology Laboratory, Department of Energy (DOE).

**ACTION:** Notice of availability of a financial assistance solicitation—restricted eligibility.

**SUMMARY:** Notice is hereby given of the intent to issue Financial Assistance Solicitation DE-PS26-01NT15263 entitled "Technology Development with Independents." The Department of Energy announces that it intends to conduct a competitive Program Solicitation and award financial assistance (grants) to small independent oil production operators, operating onshore in the lower contiguous 48 states. Small independent oil-producing operators are defined as (1) companies employing less than 50 full-time employees; and (2) those having no affiliation with a major oil or gas producer (domestic or foreign). The program seeks solutions to oil production problems. Applications will be subjected to review by a DOE technical panel, and awards will be made to a limited number of applicants based on a scientific and engineering evaluation and funding availability.

**DATES:** The solicitation will be available on the DOE/NETL's Internet address at <http://www.netl.doe.gov/business> on or about February 15, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Mary Beth Pearse, Contract Specialist, MS 921-107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochran Mill Rd., Pittsburgh PA 15236-0940, E-mail Address: [marybeth.pearse@netl.doe.gov](mailto:marybeth.pearse@netl.doe.gov), Telephone Number: 412-386-4949.

**SUPPLEMENTARY INFORMATION:****Solicitation Release Notification**

Prospective applicants who would like to be notified as soon as the solicitation is available should register at <http://www.netl.doe.gov/business>. Provide your E-mail address and click on the "Oil & Gas" technology choice located under the heading "Fossil Energy." Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

**Objectives**

Through Program Solicitation DE-PS26-01NT15263, the DOE seeks applications from small independent oil producing operators for research and development, advocating solutions for production problems experienced by small independent oil producers.

**Eligibility**

Eligibility for participation in this Program Solicitation is restricted to small independent oil producing operators.

**Areas of Interest**

The Department is interested in innovative field technologies which increase production, reduce operating costs, reduce environmental concerns, or a combination thereof.

**Awards**

DOE anticipates issuing financial assistance (grants) for each project selected. DOE reserves the right to support or not support, with or without discussions, any or all applications received in whole or in part, and to determine how many awards may be made through the solicitation subject to funds available in this fiscal year (FY) and the first quarter of fiscal year 2002. Approximately \$530,000 is planned for FY 2001 and \$1,000,000 for FY 2002. The estimated funding or cost sharing by the DOE is \$75,000 per award, or

less. Cost sharing by the applicant is to be not less than 50% of the total proposed amount, which may consist of in-kind contributions.

Issued in Pittsburgh, PA on February 21, 2001.

**Dale A. Siciliano,**

*Deputy Director, Acquisition and Assistance Division.*

[FR Doc. 01-4981 Filed 2-28-01; 8:45 am]

**BILLING CODE 6450-01-P**

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## FEDERAL ELECTION COMMISSION

**Sunshine Act Meeting**

**AGENCY:** Federal Election Commission.

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**PREVIOUSLY ANNOUNCED DATE AND TIME:** Tuesday, February 27, 2001 10:00 a.m., meeting closed to the public.

This meeting was cancelled.

\* \* \* \* \*

**DATE AND TIME:** Tuesday, March 6, 2001 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

\* \* \* \* \*

**DATE AND TIME:** Thursday, March 8, 2001 at 10:00 a.m.

**PLACE:** 999 E Street, NW., Washington DC (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and Approval of Minutes.

Advisory Opinion 2001-03: The Honorable Gregory W. Meeks and the Meeks for Congress Committee.

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:**

Mr. Ron Harris, Press Officer, Telephone: (202) 694-1220.

**Mary W. Dove,**

*Acting Secretary of the Commission.*

[FR Doc. 01-5154 Filed 2-27-01; 2:46 pm]

**BILLING CODE 6715-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### White House Commission on Complementary and Alternative Medicine Policy; Notice of Meeting

Notice is given of the fourth Town Hall Meeting of the White House Commission on Complementary and Alternative Medicine Policy. The purpose of the meeting is to convene the Commission for a public hearing to receive public testimony from individuals and organizations interested in the subject of Federal policy regarding complementary and alternative medicine. Comments received at the meeting may be used by the Commission to prepare the report to the President as required by the Executive Order.

Comments should focus on the four areas that follow. Questions for consideration include, but are not limited to those presented below. For each question, please consider including in your response concerns, possible obstacles, existing programs, and suggested solutions to guide the Commission in their deliberations.

#### I. Coordinated Research and Development To Increase Knowledge of Complementary and Alternative Medicine Practices and Interventions

(A) What can be done to expand the current research environment so that practices and interventions that lie outside conventional science are adequately and appropriately addressed?

(B) What types of incentives are needed to stimulate the research of CAM practices and interventions by the public and private sectors?

(C) How can we more effectively integrate the CAM and conventional research communities to stimulate and coordinate research?

#### II. Guidance for Access to, Delivery of, and Reimbursement for Complementary and Alternative Medicine Practices and Interventions

(A) Do you have ready access to CAM practices and interventions?

(B) How can access to safe and effective CAM practices and interventions be improved?

(C) What types of CAM practices and interventions should be reimbursable through federal programs or other health care coverage systems?

#### III. Training, Education, Certification, Credentialing, Licensing, and Accountability of Health Care Practitioners in Complementary and Alternative Medicine

(A) How can uniform standards of education, training, licensing and certification be applied to all CAM practitioners?

(B) What training and education should be required of all health care providers to assure access to safe and effective CAM practices and interventions?

(C) What sources of funds exist for the education and training of CAM practitioners?

(D) Are performance standards or practices guidelines needed to ensure the public will have access to the full range of safe and effective CAM practices and interventions?

#### IV. Delivery of Reliable and Useful Information on Complementary and Alternative Medicine to Health Care Professionals and the Public

(A) How can useful, reliable, and updated information about CAM practices and interventions be made more accessible? How would you like to receive such information?

(B) As a consumer, what kinds of information about CAM practices and interventions are most needed and important to you?

(C) As a health care provider, what kinds of information about CAM practices and interventions are most needed and important to you?

The Town Hall Meeting is open to the public and opportunities for oral comments and written statements by the public will be provided.

*Name of Committee:* The White House Commission on Complementary and Alternative Medicine Policy.

*Date:* March 16, 2001.

*Time:* 8:30 a.m.–5:00 p.m.

*Place:* Cowles Auditorium, Hubert H. Humphrey Institute of Public Affairs Conference Center, 301 19th Avenue South, Minneapolis, MN 55455.

*Contact Persons:* Stephen C. Groft, Pharm. D., Executive Director, or Michele Chang, CMT, MPH, Executive Secretary, 6701 Rockledge Drive, Room 1010, MSC-7707, Bethesda, MD 20817-7707, Phone: (301) 435-7592 or 866-373-1124 (Toll-Free), Fax: (301) 480-1691, E-Mail: WHCCAMP@od.nih.gov.

The President established the White House Commission on Complementary and Alternative Medicine Policy on March 7, 2000 by Executive Order 13147. The mission of the White House Commission on Complementary and

Alternative Medicine Policy is to provide a report, through the Secretary of the Department of Health and Human Services, on legislative and administrative recommendations for assuring that public policy maximizes the benefits of complementary and alternative medicine to Americans.

Because of the need to obtain the views of the public on these issues as soon as possible and because of the early deadline for the report required of the Commission, this notice is being provided at the earliest possible time.

**Public Participation:** The Town Hall 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 comment may register by faxing a request to 301-480-1691 or by accessing the website at <http://whccamp.hhs.gov> no later than March 9, 2001.

Oral comments will be limited to five minutes. Individuals who register to speak will be assigned in the order in which they registered. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotted may also be limited by the number of registrants. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the area of interest or question (as described above) to be addressed. Individuals interested in attending the meeting to observe the proceedings but not to provide oral testimony should also register.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement at the conclusion of the morning and afternoon sessions, if time permits, and at the chairperson's discretion.

Individuals unable to attend the meeting, or any interested parties, may send written comments by mail, fax, or electronically to the staff office of the Commission for inclusion in the public record. When mailing or faxing written comments, please provide, if possible, an electronic version or a diskette.

Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact the Commission staff at the address or telephone number listed no later than March 9, 2001.

Dated: February 21, 2001.

**LaVerne Y. Stringfield,**  
Director, Office of Federal Advisory  
Committee Policy.

[FR Doc. 01-4908 Filed 2-28-01; 8:45 am]

BILLING CODE 4140-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement 01021]

#### Strategies for Improving Health Risk Communication Related to Military Deployments Among Military Personnel, Veterans, Their Family Members, and Their Health Care Providers; Notice of Availability of Funds

##### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2001 funds for a grant program for developing, implementing, and evaluating strategies for improving health risk communication related to military deployments among military personnel, veterans, their family members, and their health care providers. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Environmental Health.

For a conference copy of the "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to enhance interagency efforts to protect the health of deployed military personnel, veterans, and their families through improved health risk communication efforts that are timely, understandable, and effective. This should be accomplished through the development, implementation, and evaluation of strategies for communicating health risk information related to military deployments. This may include, but is not limited to the following types of studies:

- a. Assessment of optimal strategies, methods or tools for conveying health information to deployed military personnel, veterans, their families, and their health care providers;
- b. Evaluation of the impact of various health risk communication strategies on attitudes regarding risk, knowledge of health issues and outcomes, health and

illness behaviors, and the prevention of ill-defined, symptom-based conditions such as those seen among Gulf War veterans;

c. Evaluation of patient and health care provider acceptance and attitudes about various risk communication tools and assessment of how these tools impact upon patient-provider communication.

For additional information, see Addendum II of this announcement, Background Information.

##### B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, or women-owned businesses.

**Note:** Public Law 104-65 states that an organization, described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

##### C. Availability of Funds

Approximately \$800,000 is available in FY 2001 to fund up to three awards. It is expected that the average award will be \$260,000, ranging from \$200,000 to \$400,000. It is expected the awards will begin on or about September 1, 2001, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

##### Use of Funds

The budget should include a request for travel funds for key staff to participate in at least 3 planning meetings in either Atlanta or Washington DC per year (or clearly specify that the organization will provide required travel funds from other sources).

##### D. Program Requirements

The following are requirements for this program:

1. Develop and pilot test the study protocol and data collection instruments.
2. Ensure that appropriate cognitive, behavioral, and human factors variables

are included in the project's experimental design and analyses.

3. Provide time lines for completing all components of the study.

4. Assure and maintain the confidentiality of all study participants.

5. Conduct the analysis, interpretation, presentation, and reporting of the study findings.

6. Establish appropriate partnerships to ensure the successful completion of the study. This may include, but is not limited to, partnerships with state or local health departments, community-based or professional organizations, local veterans' or military service organizations, and other veterans and military groups.

##### E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

##### F. Submission and Deadline

Submit the original and five copies of PHS-398 (OMB No. 0925-0001). (Adhere to instructions in the ERRATA Instruction Sheet for PHS-398). Forms are available in the application kit. On or before May 2, 2001, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

**Deadline:** Applications shall be considered as meeting the deadline if they are either: (a) received on or before the deadline date, or (b) sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

**Late Applications:** Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

##### G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

###### 1. Background and Need (10 Points)

The extent to which the applicant has provided adequate background information justifying the need for the research, and his or her ability to

conduct this or similar research. This should include the following: (a) Description of the scientific basis for the research (including an understanding of the role of symptom-based conditions in military and civilian populations), identification of the knowledge gaps which the research is intended to fill, and the expected outcome of the research; (b) description of the problems, complexities, and partnerships that will be required to carry out the research; and (c) description of the applicant's current and previous experience conducting health risk communication research and/or research with military populations and their family members.

#### 2. Goals and Objectives (20 Points)

a. The extent to which the applicant has included goals and objectives which are relevant to the purpose of the proposal and feasible to be accomplished during the project period, and the extent to which the goals and objectives are specific and measurable.

b. The extent to which the proposed goals and objectives are relevant for enhancing federal efforts to improve deployment-related health risk communication.

#### 3. Proposed Plan (50 Points)

a. The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goal. This should include a reasonable and complete time line for implementing all activities; designation of responsibility for each action undertaken; and a description of data management and quality assurance procedures, data analysis plans, and methods to evaluate and assess the cognitive, behavioral, and human factors aspects of the risk communication activities.

b. The extent to which the applicant has adequately described the key communication elements that will form the basis of the research. This should include a description of targeted audience(s), plans for developing messages and selecting channels for message delivery, expected communication objectives, implementation and monitoring plans, and methods of evaluation.

c. The extent to which the applicant documents the establishment of internal and external partnerships, the adequacy of plans for maintaining these partnerships, the appropriateness of the described partners, and the degree to which these partnerships will ensure the successful and timely completion of the research. The applicant provides

meaningful letters of support from identified partners.

d. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This should include the proposed plan for inclusion of both sexes and racial and ethnic minority populations for appropriate representation, the proposed justification when representation is limited or absent, a statement as to whether the design of the study is adequate to measure differences when warranted, and a statement as to whether the plans for recruitment and outreach of study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

#### 4. Management and Staffing Plan (20 Points)

The extent to which proposed staffing, organizational structure, staff experience and background, job descriptions and curricula vitae for both proposed and current staff indicate ability to carry out the purposes of the research.

#### 5. Budget and Justification (Not Scored)

The extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the grant funds. All budget categories should be itemized.

#### 6. Human Subjects (Not Scored)

The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

#### H. Other Requirements

Technical Reporting Requirements: Provide CDC with original plus two copies of:

1. Semi-annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit.

- AR-1—Human Subjects Requirements
- AR-2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR-7—Executive Order 12372 Review

AR-9—Paperwork Reduction Act Requirements

AR-10—Smoke-Free Workplace Requirements

AR-11—Healthy People 2010

AR-12—Lobbying Restrictions

AR-14—Accounting System Requirements

AR-15—Proof of Non-Profit Status

#### I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act (42 U.S.C. sections 241 and 247b, as amended). The Catalog of Federal Domestic Assistance number is 93.283.

#### J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC home page on the internet at: <http://www.cdc.gov> (click on funding). Please refer to Program Announcement Number 01021 when requesting information.

To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888-472-6874). You will be asked to leave your name and address, and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical information may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341-4146, Telephone number: 770-488-2716.

For program technical assistance, contact: Drue H. Barrett, Ph.D., Chief, Veterans' Health Activity Working Group, Office of the Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, 1600 Clifton Road, Mail Stop E-19, Atlanta, GA 30333, Telephone number: 404-639-4862, Email address: [dhb1@cdc.gov](mailto:dhb1@cdc.gov)

Dated: February 23, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 01-4936 Filed 2-28-01; 8:45 am]

**BILLING CODE 4163-18-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[Program Announcement Number 01030]

#### Traumatic Brain Injury Surveillance; Notice of Availability of Funds

##### A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 2001 funds for a cooperative agreement program for Central Nervous System Injury Surveillance activities, consisting of the following parts: Core Traumatic Brain Injury (TBI) Surveillance (Part A); and Enhanced TBI Surveillance (Part B). This Program addresses the "Healthy People 2010" focus areas for Injury and Violence Prevention. The purpose of the program is to develop and sustain injury surveillance programs with a focus on central nervous system injuries, particularly TBI. The goal of this program is to produce data of demonstrated quality that will (a) be useful to State injury prevention and control programs and (b) enable national estimates of TBI incidence and public health consequences.

##### B. Eligible Applicants

Assistance will be provided only to the official public health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Applicants must submit one application for either Part A alone or for Parts A and B combined. Applicants cannot apply for Part B only. To be eligible, all applicants must provide evidence of: (a) An existing statewide population-based surveillance system for TBI-related hospitalizations and deaths, (b) the availability of at least one year of data from the TBI surveillance system (describing cases occurring in calendar year 1998 or 1999), and (c) existing legislation and/or regulations that support current collection of necessary TBI data. Applications that fail to submit evidence of (a), (b), and (c) will be considered non-responsive and will be returned without review.

**Note:** Public Law 104-65 states that an organization, described in section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities is not eligible

to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

##### C. Availability of Funds

Approximately \$1,350,000 is available in FY 2001 to fund approximately 12 awards:

**Part A: Core TBI Surveillance—** Approximately \$960,000 is available to fund approximately 12 awards. It is expected that the average award will be \$80,000. It is expected that the awards will begin on or about August 1, 2001, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

**Part B: Enhanced TBI Surveillance—** Approximately \$390,000 is available to fund approximately 6 of the 12 above (Part A). It is expected that the average additional award will be \$65,000. It is expected that the awards will begin on or about August 1, 2001, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Applicants must be approved for part A in order to be eligible to receive part B funding.

Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and on the availability of funds.

**Note:** Funds awarded may not be used to supplant funds available from other sources to the recipient to conduct similar activities. Funding may not be used to provide patient care or management. Funds are not to be used for construction purposes or for rental of office space or for the purchase or rental of furniture or vehicles.

##### Funding Preferences

During the selection process, CDC may attempt to ensure a balanced geographic distribution of funded TBI surveillance projects.

##### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. and 2. (Recipient Activities), and CDC will be responsible for the activities listed under 3. (CDC Activities).

1. Recipient Activities for Part A (all recipients):

a. Conduct statewide surveillance of TBI, consistent with standard definitions and methods for core surveillance, described in the current CDC Guidelines for Central Nervous System Injury Surveillance. This includes linking and unduplicating data obtained from State vital records (death certificates and/or multiple-cause-of-

death data) and statewide hospital discharge data (or equivalent data), including data elements that describe diagnosis, demographics, external cause, and survival status.

b. Conduct yearly evaluations of the surveillance system to assess the predictive value positive and sensitivity of case ascertainment as well as the completeness and validity of the data collected.

c. Analyze and interpret collected data.

d. Link surveillance activities and findings to State injury prevention and control activities, including CDC Core State Injury Surveillance and Program Development, where applicable.

e. Provide representative(s) to CDC-sponsored meetings for Cooperative Agreement recipients.

2. Additional Recipient Activities for Part B:

a. Review medical records to obtain data for additional variables (e.g., "optional" variables described in the CDC Guidelines), that address severity of injury, circumstances and etiology of injury, and early outcome of injury, in a large representative sample (e.g., n ≈ 1000) of reported cases of TBI-related hospitalization.

b. Analyze and interpret collected data.

3. CDC Activities:

a. Provide technical assistance, if necessary, for effective project planning and management.

b. Provide technical assistance to evaluate the surveillance system for completeness and validity.

c. Facilitate communication/coordination among States to improve efficiency of activities and quality of data.

d. Coordinate meetings for Cooperative Agreement recipients, to be held annually.

##### E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The proposal narrative (excluding budget narrative and any appendices) should be no more than 25 double-spaced pages for Part A, or an additional 10–15 pages if also applying for Part B, printed on one side with one inch margins, and no smaller than 12-point font. If applying for Parts A and B, include a separate budget and narratives that are clearly identified as "Part A" and "Part B." Number each page consecutively and provide a complete

table of contents. The entire application with appendices should be no longer than 70 pages total.

Applications should include:

1. Executive Summary (one page, may be single spaced): This section (used to determine eligibility) should briefly summarize:

a. amount of federal assistance requested in dollar amounts for Part A and, if applicable, Part B.

b. existing capacity, *i.e.*, (a) the existence of a statewide population-based surveillance system for TBI-related hospitalizations and deaths, (b) the most recent year for which data from the TBI surveillance system have been analyzed, and (c) existing legislation and/or regulations that support current collection of necessary TBI data.

c. major objectives and activities proposed.

2. Application Narrative:

a. Introduction, review of the literature, and statement of need.

b. Existing TBI surveillance program and capacity.

c. Proposed goals and objectives.

d. Proposed methods and activities.

e. Project management and project staff.

f. Proposed methods to evaluate the attainment of objectives.

g. Description of capacity, methods, activities, and staff specific to Part B, if applicable.

h. Budget narrative, including justification for all proposed expenditures. If applying for part B, submit a separate budget.

## F. Submission and Deadline

### *Letter of Intent (LOI)*

Prospective applicants are asked to submit a letter of intent that includes the number and title of the announcement, a descriptive title of the proposed program, the name, address, and telephone number of the Principal Investigator and whether applying for Part A only or Parts A and B. Although a letter of intent is not required, is not binding, and is not used in the review of an application, the information that it contains is used to estimate the potential review workload and avoid any potential conflict of interest in the review. The letter of intent should be submitted on or before April 2, 2001 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application: Submit the original and 2 copies of PHS 5161-1 (OMB Number 0937-0189). Forms are in the application kit. On or before May 2, 2001, submit the application to the

Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the objective review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

## G. Evaluation Criteria

Each application will be evaluated and scored individually by an objective review panel. All applications will be evaluated and scored first for Part A and subsequently, where applicable, for Part B.

Evaluations and scoring for Part A will be conducted according to the following criteria:

### *1. Review of Literature and Statement of Need: (5 Points)*

Consistent with this Program Announcement, the extent to which the applicant reviews key literature relevant to the proposed project, and the extent to which the applicant describes needs within the jurisdiction to which the applications are responsive.

### *2. Existing TBI Surveillance Program and Capacity: (20 Points)*

The extent to which the applicant demonstrates authority to collect and maintain necessary TBI surveillance data. The extent to which the applicant describes an effective existing TBI surveillance system whose methods, including case definitions, are consistent with CDC Guidelines, with demonstrated timeliness of case ascertainment, completeness of case ascertainment, and ability to analyze data. The extent to which the applicant provides evidence of successful TBI surveillance activities, including:

a. a summary of current (*i.e.*, 1998 or 1999) TBI morbidity and mortality data analyzed by age, sex, and cause;

b. an evaluation of TBI surveillance data quality (*e.g.*, predictive value positive, completeness, timeliness).

### *3. Goals and Objectives: (10 Points)*

The extent to which objectives are specific, achievable, practical, measurable, time-linked, and consistent with the overall purposes described in this announcement.

### *4. Methods and Activities: (35 Points)*

The extent to which the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this announcement. The extent to which clear explanations of appropriate methods addressing case ascertainment and data collection, TBI case definition(s), data elements, sources and availability of data, protection of confidentiality, and data processing and analysis.

### *5. Management and Staffing: (20 Points)*

The extent to which the staffing plan indicates the applicant's ability to carry out the objectives of the program. Considerations include: organizational structure, staff qualifications, experience, degree of stability maintaining current staff in critical positions, identified training needs or plan, and job descriptions and curricula vitae for both proposed and current staff. Also, the extent to which the applicant plans to coordinate activities with any other injury surveillance, prevention, and control programs or activities in the applicant's organizations.

### *6. Evaluation: (10 Points)*

The degree to which the applicant includes plans to evaluate the attainment of proposed objectives, including plans to evaluate the sensitivity and predictive value positive of case ascertainment and the completeness and quality of data.

### *7. Budget and Justification: (Not Scored)*

The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities.

Part B will be evaluated and scored according to the following criteria:

### *1. Existing Capacity for Enhanced TBI Surveillance: (30 Points)*

The extent to which the applicant demonstrates appropriate existing capacity to collect and analyze optional data (*e.g.*, describing TBI severity, circumstances, and early outcome) from a representative sample of cases reported to the TBI surveillance system.

### *2. Methods for Enhanced TBI Surveillance: (70 Points)*

The extent to which the applicant proposes appropriate methods and

activities to collect and analyze optional data consistent with the Program Requirements for Part B, including sampling methods and proposed staffing.

**3. Budget and Justification: (Not Scored)**

The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus 2 copies of:

1. Semi-annual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I in the application package:

- AR-7—Executive Order 12372 Review
- AR-9—Paperwork Reduction Act Requirements
- AR-10—Smoke-Free Workplace Requirements
- AR-11—Healthy People 2010
- AR-12—Lobbying Restrictions
- AR-13—Prohibition on Use of CDC Funds for Certain Gun Control Activities
- AR-21—Small, Minority, and Women-Owned Businesses

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), 317(k)(2), 391, 392, 393A, 394, and 394A [42 U.S.C. 241(a), 247b(k)(2), 280b, 280b-1, 280b-2, 280b-3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

**J. Where To Obtain Additional Information**

This and other CDC announcements are available through the CDC home page on the Internet at: <http://www.cdc.gov>. To receive additional written information and to request an application kit, call 1-888-GRANTS4 (1-888 472-6874). You will be asked to leave your name and address, and will be instructed to identify the announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Angie Nation, Grants Management Specialist, Announcement #01030, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341-4146, Telephone number (770) 488-2719, Email address: [aen4@cdc.gov](mailto:aen4@cdc.gov).

For program technical assistance, contact: Renee Johnson, MSPH, CDC National Center for Injury Prevention and Control, 4770 Buford Highway, NE, Mailstop F41, Atlanta, GA 30341-3724, Telephone (770) 488-4031, Email address: [nba7@cdc.gov](mailto:nba7@cdc.gov).

For a copy of the CDC Guidelines for Central Nervous System Injury Surveillance, contact: Patricia Allen, CDC National Center for Injury Prevention and Control, 4770 Buford Highway, NE, Mailstop F41, Atlanta, GA 30341-3724, Telephone (770) 488-4031, Email address: [pca9@cdc.gov](mailto:pca9@cdc.gov).

CDC does not guarantee to accept or justify its nonacceptance of recommendations that are received more than 60 days after the application deadline.

Dated: February 23, 2001.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 01-4937 Filed 2-28-01; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Comment Request**

**Proposed Projects**

*Title:* Study of the TANF Application Process.

*OMB No.* New Collection.

*Description:* The Study of the TANF Application Process is designed to provide systematic information about how application policies and processes have changed under TANF, and how States define and count applications and application results. The Study will also explore how application policies are implemented in a sample of local TANF offices and will collect data on individuals' application decisions, experiences, and outcomes. In addition, the Study will also collect information on the availability and quality of State-collected data on the TANF application process. The primary purpose of this Study is to provide useful information to be considered in the upcoming TANF reauthorization process.

*Respondents:* The respondents for the Mail Questionnaire are the 50 States, the District of Columbia, and the U.S. Territories of Guam, Puerto Rico, and the Virgin Islands. Eighteen States will be respondents to the State Telephone Survey, 54 individuals for the Open-ended Interviews for Case Studies, six States for Case Abstractions, and 1200 individuals for the follow-up Telephone Interviews with Applicants and Non-applicants.

**ANNUAL BURDEN ESTIMATES**

Instrument	Number of Respondents	Number of Responses per Respondent	Average Burden Hours per Response	Total Burden Hours
18-State Telephone Survey .....	18	1	3	54
54-State Mail Questionnaire .....	54	1	6	324
Open-ended interview for Case Studies .....	54	1	1.5	81
Follow-up Telephone Interview with Applicants and Non-applicants .....	1200	1	.33	396
Case abstractions—pulling case files for contractor review and abstraction ..	6	1	20	120
Estimated Total Annual Burden Hours: .....				975

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded 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.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: February 26, 2001.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 01-5009 Filed 2-28-01; 8:45 am]

BILLING CODE 4184-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 00N-1435]

#### Agency Information Collection Activities; Announcement of OMB Approval; Substantial Evidence of Effectiveness of New Animal Drugs

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Substantial Evidence of Effectiveness of New Animal Drugs" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Office of Information

Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1472.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 16, 2000 (65 FR 49989), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0356. The approval expires on February 29, 2004. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: February 22, 2001.

**William K. Hubbard,**

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

[FR Doc. 01-4961 Filed 2-28-01; 8:45 am]

BILLING CODE 4160-01-F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 95N-0220]

#### Agency Information Collection Activities; Announcement of OMB Approval; Substances Approved for Use in the Preparation of Meat and Poultry Products

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Substances Approved for Use in the Preparation of Meat and Poultry Products" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of August 25, 2000 (65 FR 51758), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and

a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0461. The approval expires on February 29, 2004. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: February 22, 2001.

**William K. Hubbard,**

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

[FR Doc. 01-4965 Filed 2-28-01; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 97N-0242]

#### Agency Information Collection Activities; Announcement of OMB Approval; Biological Products: Reporting of Biological Product Deviations in Manufacturing

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Biological Products: Reporting of Biological Product Deviations in Manufacturing" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA-250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-4659.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 7, 2000 (65 FR 66621), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910-0458. The approval expires on February 29, 2004. A copy of the supporting statement for this information collection is available on the Internet at <http://www.fda.gov/ohrms/dockets>.

Dated: February 22, 2001.

**William K. Hubbard,**

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

[FR Doc. 01-4966 Filed 2-28-01; 8:45 am]

BILLING CODE 4160-01-S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 01D-0044]

#### Medical Devices Draft Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver; Availability

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver." FDA is issuing this draft guidance to propose alternative criteria for obtaining CLIA waiver to the criteria proposed by the Health Care Financing Administration (HCFA) and the Centers for Disease Control and Prevention (CDC). This draft guidance is neither final nor in effect at this time.

**DATES:** Submit written comments on the draft guidance by May 30, 2001.

**ADDRESSES:** Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver" to the Division of Small Manufacturers Assistance (HFZ-220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301-443-8818. 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. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

**FOR FURTHER INFORMATION CONTACT:**

Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301-594-1243.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

FDA assumes primary responsibility for performing the CLIA complexity categorization functions that includes requests for waiver. Responsibility for determining whether a particular device is waived was transferred from the CDC to FDA on January 21, 2000. At the same time, HCFA is responsible for financial management operations of the CLIA program. In the **Federal Register** of September 13, 1995 (60 FR 47534), HCFA and CDC published a notice of proposed rulemaking that proposed criteria for obtaining CLIA waiver (the 1995 proposed rule). FDA believes, based on its interpretation of the legislative history and the changes to the CLIA statute enacted by Congress on November 21, 1997, as part of the Food and Drug Administration Modernization Act of 1997 (FDAMA), that alternative criteria to the criteria proposed by HCFA and CDC can be used to determine whether a device can be waived. HCFA, CDC, and FDA are continuing to discuss whether the criteria contained in this guidance appropriately reflect the intent of the statute. In an effort to get additional perspective on these criteria, this draft guidance will be discussed at the Clinical Laboratory Improvement Advisory Committee (CLIAC) meeting to obtain their advice and recommendations. FDA is publishing this draft guidance so that it can be presented and discussed at the February 7 and 8, 2001, CLIAC meeting. FDA remains committed to ensuring an open, consistent, reliable process that all parties can understand and comment on as we take steps to finalize a rule.

Because FDA believes the agency will have to repropose a regulation to clarify waiver criteria, we think it will be some time before a final rule is codified. If this draft guidance is made final, the agency would propose alternative waiver criteria that may continue in the interim (based on comments received on this draft guidance) until a reproposal of the regulation to clarify waiver criteria is published.

##### II. Significance of Guidance

FDA bases the recommendations in this draft guidance document on our interpretation of the law, our review experience with CLIA complexity reviews, and our interactions with stakeholders throughout the transition of this program from CDC to FDA. One of the interactions with stakeholders was in the form of an open public workshop on August 14 and 15, 2000. We are still evaluating the comments

from this workshop. We intend to reevaluate and revise this draft guidance, as circumstances warrant, based on these and future comments. The recommendations in this draft guidance are different from the recommendations made by HCFA and CDC in their 1995 proposed rule. As stated in this draft guidance, FDA will continue to review requests for waiver that follow the criteria contained in the 1995 proposed rule; however, we will also review requests for waiver that follow the criteria contained in this draft guidance document. The most significant difference between the criteria proposed by CDC and HCFA, and the criteria outlined in this draft guidance, is that this draft guidance allows studies that compare the performance of the device in the hands of untrained users with the performance of the device in the hands of laboratory professionals to demonstrate accuracy.

This draft guidance represents the agency's current thinking on criteria for obtaining CLIA waiver. 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 applicable statutes and regulations.

The agency has adopted good guidance practices regulations (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (21 CFR 10.115; 65 FR 56468, September 19, 2000). This draft guidance is issued as a Level 1 draft guidance consistent with the GGP regulations.

##### III. Electronic Access

In order to receive the draft guidance entitled "Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver" via your fax machine, call the CDRH Facts-On-Demand system at 800-899-0381 or 301-827-0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1147) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the draft document entitled "Guidance for Clinical Laboratory Improvement Amendments

of 1988 (CLCIA) Criteria for Waiver," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at <http://www.fda.gov/cdrh>. "Guidance for Clinical Laboratory Improvement Amendments of 1988 (CLIA) Criteria for Waiver" is available at <http://www.fda.gov/cdrh>.

#### IV. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance by May 30, 2001. 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 may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 14, 2001.

**Linda S. Kahan,**

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

[FR Doc. 01-4963 Filed 2-28-01; 8:45 am]

**BILLING CODE 4160-01-F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[Document Identifier: HCFA-265]

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* Independent Renal Dialysis Facility Cost Report Form and Supporting Regulations 42 CFR 413.24, 413.20;

*Form No.:* HCFA-265 (OMB# 0938-0236);

*Use:* The Medicare Independent Renal Dialysis Facility Cost Report provides for determinations and allocation of costs to the components of the Renal Dialysis facility in order to establish a proper basis for Medicare payment;

*Frequency:* Annually;

*Affected Public:* Business or other for-profit, not-for-profit institutions, and State, Local, or Tribal Government;

*Number of Respondents:* 3,085;

*Total Annual Responses:* 3,085;

*Total Annual Hours:* 604,660.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at <http://www.hcfa.gov/regs/prdact95.htm>, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to [Paperwork@hcfa.gov](mailto:Paperwork@hcfa.gov), or call the Reports Clearance Office on (410) 786-1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Melissa Musotto, Room N2-14-26, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: February 14, 2001.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 01-4987 Filed 2-28-01; 8:45 am]

**BILLING CODE 4120-03-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Children's Hospitals Graduate Medical Education (CHGME) Payment Program: Final Eligibility and Funding Criteria and List of Eligible Hospitals and Proposed Methodology for Determining FTE Resident Count, Treatment of New Children's Teaching Hospitals, and Calculating Indirect Medical Education Payment

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Final notice and additional provisions proposed for comment.

**SUMMARY:** This notice sets forth final eligibility, funding criteria, payment methodology and performance measures for the Children's Hospitals Graduate Medical Education Payment (CHGME) program, authorized by section 340E of the Public Health Service Act (42 U.S.C. 256e), amended by Pub. L. 106-310, The Children's Health Act, 2000. It includes a list of hospitals potentially eligible for the CHGME program. The notice also requests comments on proposed criteria for: determining FTE resident count, the treatment of new children's teaching hospitals, and the methodology for indirect medical education (IME) payments. In compliance with the Paperwork Reduction Act of 1995, the Department obtained Office of Management and Budget (OMB) approval on an emergency clearance to any data collections imposed on the public (OMB No. 0915-0247). The Department has requested approval for extension of OMB clearance to any data collections imposed on the public by this notice. Any changes to this collection will not become effective until approved by OMB.

**DATES:** Interested persons are invited to comment by April 2, 2001. All comments received on or before April 2, 2001 will be considered in the development of the final notice concerning the proposed methodology. The Department will address comments individually or by group and publish a final notice on these comments in the **Federal Register**.

**ADDRESSES:** Submit all written comments concerning this notice to Barbara Brookmyer, Division of Medicine and Dentistry, Bureau of Health Professions, Health Resources and Services Administration, Room 9A-27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; or by

e-mail to  
*ChildrensHospitalGME@hrsa.gov*.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Brookmyer, Division of  
 Medicine and Dentistry; telephone (301)  
 443-1058.

**SUPPLEMENTARY INFORMATION:** The  
 CHGME program, as authorized by  
 section 340E of the Public Health  
 Service (PHS) Act (the Act) (42 U.S.C.  
 256e), provides funds to children's  
 hospitals to address disparity in the  
 level of Federal funding for children's  
 hospitals that result from Medicare  
 funding for graduate medical education  
 (GME). Pub. L. 106-310 amended the  
 CHGME statute to extend the program  
 through Federal fiscal year (FFY) 2005.

On June 19, 2000, the Secretary  
 published a notice in the **Federal  
 Register** (65 FR 37985) setting forth  
 proposed rules to implement the  
 CHGME Program. During the comment  
 period, the Department received 21  
 comments from hospitals, hospital and  
 professional associations, Medicare  
 counseling companies, other Federal  
 agencies, and individuals.

The Secretary thanks the respondents  
 for the quality and the thoroughness of  
 their comments. As a result of these  
 comments, the Department has made  
 numerous revisions and clarifications in  
 this final notice. The comments and the  
 Department's responses to the  
 comments are discussed below. This  
 Notice also reflects amendments to the  
 CHGME statute made by Pub. L. 106-  
 310, the Children's Health Act, 2000,  
 enacted on October 17, 2000. As  
 required by these amendments,  
 subsequent to the publication of this  
 notice, the Department will promulgate  
 them as codified regulations through  
 additional rulemaking procedures in  
 accordance with Title 5 of the United  
 States Code.

**Provisions Proposed for Comment**

The Department is soliciting  
 comments on the following proposed  
 provisions within these rules: (1) The  
 criteria for FTE resident count; (2) the  
 treatment of new children's teaching  
 hospitals with respect to resident count;  
 and (3) the methodology for IME  
 payments. The first and second issues  
 result from amendments made to the  
 CHGME statute. The third proposal  
 relating to IME payments were not  
 addressed in the Department's June 19,  
 2000, **Federal Register** notice.

**I. Funding**

The Department will make CHGME  
 program payments in FFY 2001 as  
 payments were made in FFY 2000,  
 dividing the available funding based on

the CHGME authorization statute with  
 approximately one-third of the funds for  
 direct medical education (DME)  
 payments and two-thirds to IME  
 payments. Should a FY 2001  
 appropriation act alter this plan, the  
 CHGME program will revise the  
 payment plan accordingly.

The CHGME statute, as amended, sets  
 forth the following funding process for  
 DME and IME payments:

1. *Calculation of payments:* The  
 Secretary must determine the amounts  
 to be paid for DME and IME before the  
 beginning of each fiscal year for which  
 payments will be made.

2. *Withholding:* the Secretary must  
 withhold up to 25 percent from each  
 interim installment for DME and IME as  
 necessary to ensure that a hospital will  
 not be overpaid on an interim basis.

3. *Revised Counts:* The Secretary must  
 determine, prior to the end of the fiscal  
 year, any changes to the number of  
 residents reported by a hospital in its  
 application for the current fiscal year to  
 determine the final amount payable to  
 the hospital for the current fiscal year  
 for both DME and IME payments.

4. *Reconciliation:* The Secretary then  
 must pay any balance due or recoup any  
 overpayments made to each hospital.

**II. Withholding and Reconciliation**

The CHGME statute, prior to its  
 amendment, provided for a withholding  
 and reconciliation process designed to  
 increase the accuracy of the DME  
 payments made to hospitals. The  
 amendments revised this provision to  
 include IME payments in the  
 withholding and reconciliation process.

In FFY 2000, the Department did not  
 implement the withholding and  
 reconciliation process for DME  
 payments provided for in the CHGME  
 program statute due to inadequate time  
 and restrictions in the FFY 2000  
 Appropriations Act. The FFY 2000  
 Appropriations Act required all  
 appropriated funds to be obligated in  
 FFY 2000, thus prohibiting carryover  
 funds to be awarded to hospitals in FFY  
 2001. To the extent possible, the  
 Department will implement the CHGME  
 program's withholding and  
 reconciliation process for both DME and  
 IME payments beginning in FFY 2001.

As revised, the CHGME statute  
 requires the Secretary to withhold up to  
 25 percent from each installment  
 payment for both DME and IME as  
 necessary to ensure that a hospital will  
 not be overpaid on an interim basis. To  
 distribute the funds withheld, prior to  
 the end of the fiscal year the Secretary  
 must determine any changes to the  
 number of residents reported by a  
 hospital in its application for the

current fiscal year in order to determine  
 the final amount payable to the hospital  
 for the current fiscal year for both DME  
 and IME payments. Then, the Secretary  
 must pay any balance due or recoup any  
 overpayments made to each hospital.

As provided by statute, a hospital may  
 request a hearing on the Secretary's  
 payment determination by the Provider  
 Reimbursement Review Board under  
 section 1878 of the Social Security Act  
 (42 U.S.C. 1395oo), implemented by  
 regulations at 42 CFR subpart R.

The Secretary will include in the  
 reconciliation process funds that are  
 returned to the Department during a  
 fiscal year by the termination of  
 hospitals from the CHGME program.  
 These funds will be distributed to the  
 remaining children's hospitals as part of  
 reconciliation payments.

**III. Eligible Hospitals**

Pub. L. 106-310 amended the CHGME  
 statute to revise the definition of an  
 eligible hospital, effective October 17,  
 2000. As revised, a "children's hospital"  
 eligible to participate in the CHGME  
 program meets the following criteria:

1. It participates in an approved GME  
 program;

2. It has a Medicare provider  
 agreement;

3. It is excluded from the Medicare  
 inpatient prospective payment system  
 (PPS) under section 1886(d)(1)(B)(iii) of  
 the Social Security Act and its  
 accompanying regulations; and

4. It is a "freestanding" children's  
 hospital.

Several respondents indicated that the  
 Department may have omitted  
 additional potentially eligible hospitals  
 from the list included in the June 19,  
 2000, **Federal Register** notice due to the  
 proposed eligibility requirement  
 published in that notice that a hospital  
 have a provider agreement with a  
 unique Medicare provider number as a  
 "children's hospital" under section  
 1886(d)(1)(B)(iii) of the Social Security  
 Act.

The Department agreed with the  
 respondents and for FFY 2000, used the  
 following eligibility for the CHGME  
 program;

A "children's hospital" eligible to  
 apply for CHGME funds in FFY 2000  
 was a hospital that met all of the  
 following criteria:

1. More than 50% of its inpatients  
 were individuals under 18 years of age;

2. It participated in an approved GME  
 program;

3. It is excluded from the Medicare  
 PPS under section 1886(d)(1)(B) of the  
 Social Security Act; and

4. It was a "freestanding" children's  
 hospital. For purposes of the CHGME

program, the term “freestanding” excludes a hospital that shares a Medicare provider number with a health care system. Although an independent listing in the American Medical Association Directory or being separated physically from an adult hospital affiliate may be indicative of “freestanding,” for the purposes of the CHGME program, they do not alone make a hospital “freestanding.”

Several respondents indicated a concern with the term “hospital system” and suggested clarifying the definition of a “freestanding” hospital.

The Department recognizes the ambiguity of the terms “hospital system” and “freestanding,” particularly in today’s rapidly changing world of health care delivery. Some “freestanding” hospitals also may be affiliated with or are part of larger systems. For purposes of eligibility in the CHGME program, the Department intends to exclude those children’s hospitals that operate under a Medicare hospital provider number assigned to a larger health care entity that would allow the children’s hospital to receive Medicare GME payments as part of the larger health care entity. The Department will maintain its definition

of “freestanding” as stated in the eligibility criteria.

A number of respondents asserted that other entities such as children’s units within PPS hospitals and, in some cases, PPS hospitals themselves should be eligible for CHGME funds, if they meet the other eligibility criteria, since they also may suffer from the allegedly inequitable internal distribution of GME funds under 1886(h) of the Social Security Act.

The Department does not agree with these comments. The intent of the CHGME Act is to create parity in GME payments among all hospitals providing GME. It is clear that primarily two factors cause this disparity in children’s hospitals: (1) low Medicare utilization; and (2) PPS-exempt status. While there may be some GME payment disparity among PPS hospitals that serve children and among children’s units within PPS hospitals, unlike “freestanding” children’s hospitals which are only eligible to receive DME payments, they are eligible to receive both DME and IME payments.

One respondent requested the Department to clarify how waiver from the PPS system by a State would affect eligibility. Currently, Maryland is the

only PPS-waivered State. A State’s PPS status has no effect on the CHGME eligibility criteria. Hospitals in PPS-waivered States must still meet all the eligibility criteria of the CHGME program.

Two respondents brought to the Department’s attention the inconsistency in using the term “accredited” instead of the term “approved” to refer to a GME training program. The Department agrees with this comment and will consistently refer to these training programs as “approved” in accordance with the Medicare program’s definition of hospitals eligible to receive funds for GME, 42 U.S.C. 256e(b)(1); 42 CFR 413.86.

Based on the revised eligibility criteria, the Department has identified the below-listed hospitals as potentially eligible for participation in the CHGME program and will send these hospitals applications for FFY 2001 through FFY 2005. This list is not a final determination of eligibility. A hospital omitted from this list, including a new hospital, can obtain an application by download form the CHGME Web Site: <http://bhpr.hrsa.gov/childrenshospitalgme>.

CHGME HOSPITALS

Medicare provider No.	Facility name	City	State
01-3300	Children’s Hospital of Alabama	Birmingham	AL
03-3301	Los Ninos Hospital	Phoenix	AZ
04-3300	Arkansas Children’s Hospital	Little Rock	AR
05-3300	Valley Children’s Hospital, California	Madera	CA
05-3301	Children’s Hospital Medical Center	Oakland	CA
05-3302	Children’s Hospital of Los Angeles	Los Angeles	CA
05-3303	Children’s Hospital and Health Center	San Diego	CA
05-3304	Children’s Hospital of Orange County	Orange	CA
05-3305	Lucile Salter Packard Children’s Hospital	Palo Alto	CA
05-3306	Children’s Hospital at Mission	Mission Viejo	CA
05-3307	Children’s Recovery Center of Northern California	Campbell	CA
05-3308	Healthbridge Children’s Rehab Hospital	Orange	CA
06-3301	The Children’s Hospital	Denver	CO
07-3300	Connecticut Children’s Medical Center	Hartford	CT
08-3300	Alfred I. Dupont Institute	Wilmington	DE
09-3300	Children’s Hospital National Medical Center	Washington	DC
10-3300	All Children’s Hospital	St. Petersburg	FL
10-3301	Miami Children’s Hospital	Miami	FL
11-3300	Egleston Children’s Hospital at Emory	Atlanta	GA
11-3301	Scottish Rite Medical Center—Atlanta	Atlanta	GA
12-3300	Kapiolani Women’s & Children’s Medical Center	Honolulu	HI
14-3300	Children’s Memorial Hospital	Chicago	IL
14-3301	Larabida Children’s Hospital	Chicago	IL
15-3300	St. Vincent’s Children’s Specialty Hospital	Indianapolis	IN
17-3300	Children’s Mercy Hospital South	Overland Park	KS
19-3300	Children’s Hospital	New Orleans	LA
21-3300	Mt. Washington Pediatric Hospital	Baltimore	MD
21-3301	Kennedy Krieger Institute	Baltimore	MD
22-3300	Franciscan Children’s Hospital & Rehabilitation Center	Brighton	MA
22-3302	The Children’s Hospital	Boston	MA
23-3300	Children’s Hospital of Michigan	Detroit	MI
24-3300	Gillette Children’s Hospital	Saint Paul	MN
24-3301	Children’s Hospitals and Clinics—Saint Paul	Saint Paul	MN
24-3302	Children’s Hospitals and Clinics—Minneapolis	Minneapolis	MN
26-3301	St. Louis Children’s Hospital	Saint Louis	MO

## CHGME HOSPITALS—Continued

Medicare provider No.	Facility name	City	State
26-3302	Children's Mercy Hospital	Kansas City	MO
28-3300	Boys Town National Research Hospital	Omaha	NE
28-3301	Children's Memorial Hospital	Omaha	NE
31-3300	Children's Specialized Hospital	Mountainside	NJ
32-3307	Carrie Tingley Hospital	Albuquerque	MN
33-3301	Blythdale Children's Hospital	Valhalla	NY
36-3300	Children's Hospital Medical Center	Cincinnati	OH
36-3301	Convalescent Hospital for Children	Cincinnati	OH
36-3302	Rainbow Babies and Children's Hospital	Cleveland	OH
36-3303	Children's Hospital Medical Center	Akron	OH
36-3304	Cleveland Clinic Children's Rehabilitation Hospital	Cleveland	OH
36-3305	Children's Hospital	Columbus	OH
36-3306	Children's Medical Center	Dayton	OH
36-3307	Tod Children's Hospital	Youngstown	OH
39-3300	J.D. McCarty Center for Children with Developmental Disabilities	Norman	OK
37-3301	Children's Medical Center	Tulsa	OK
39-3302	Children's Hospital of Pittsburgh	Pittsburgh	PA
39-3303	Children's Hospital of Philadelphia	Philadelphia	PA
39-3304	Children's Home of Pittsburgh	Pittsburgh	PA
39-3306	Temple University	Philadelphia	PA
39-3307	St. Christopher's Hospital for Children	Philadelphia	PA
40-3301	University Pediatric Hospital	San Juan	PR
44-3302	St. Jude Children's Research Hospital	Memphis	TN
44-3303	East Tennessee Children's Hospital	Knoxville	TN
45-3300	Cook Ft. Worth Children's Medical Center	Fort Worth	TX
45-3301	Driscoll Children's Hospital	Corpus Christi	TX
45-3302	Children's Medical Center of Dallas	Dallas	TX
45-3304	Texas Children's Hospital	Houston	TX
45-3305	Christus Santa Rosa Children's Hospital	San Antonio	TX
45-3306	Covenant Children's Hospital	Lubbock	TX
45-3308	Pediatric Center for Restorative Care	Dallas	TX
45-3309	Beacon Health Westchase	Houston	TX
46-3301	Primary Children's Medical Center	Salt Lake City	UT
49-3300	Cumberland Hospital—The Brown Schools of Virginia	New Kent	VA
49-3301	Children's Hospital—King's Daughters	Norfolk	VA
49-3302	Children's Hospital	Richmond	VA
50-3300	Children's Hospital & Regional Medical Center	Seattle	WA
50-3301	Mary Bridge Children's Health Center	Tacoma	WA
52-3300	Children's Hospital of Wisconsin	Milwaukee	WI

**IV. Loss of Eligibility**

Several respondents noted that there should be a distinction preserved between hospitals that lose their eligibility to participate in the CHGME program and hospitals that retain their eligibility, but for some defined period have no residents rotating through the hospitals.

The Department agrees with the need to clarify the definition of loss of eligibility for the CHGME program. A hospital is eligible to participate in the CHGME program if it trains residents as a freestanding children's hospital in the FFY for which the CHGME payments are being made. Reporting residents on Medicare cost reports is irrelevant to the eligibility of the hospital. Hospitals that do not report residents to Medicare remain eligible for the CHGME program if they continue to train residents as a freestanding children's hospital in the FFY for which the payment amounts are established.

Any hospital which loses its eligibility during the course of a FFY must notify HRSA immediately of the change in status and the date on which it became ineligible. The Department will then terminate the hospitals payments under the CHGME program. The hospital will be liable for the reimbursement, with interest, of any funds received during a period after it became ineligible.

Several respondents questioned the Department's legal authority to collect interest from ineligible institutions during a reimbursement process. They requested clarification on the applicability of interest to amounts paid to hospitals later deemed to be ineligible as opposed to overpayments to eligible hospitals that may be required to reimburse the Department after a reconciliation process for the DME and IME payments.

The Federal Debt Collection Act requires the Department to collect interest on the recovery of CHGME

funds, just as on any debt owed to the Federal Government. There is no interest due on payments recovered under the reconciliation process because this is not a debt owed to the government.

**V. Determining FTE Resident Counts for DME***Residency FTE Reporting Period*

As amended, the CHGME statute provides that the Secretary make interim payments to hospitals "based on the number of residents reported in the hospital's most recently filed Medicare cost report prior to the application date for the FFY for which the interim payment amounts are established. In the case of a hospital that does not report residents on a Medicare cost report, such interim payments shall be based on the number of residents trained during the hospital's most recently completed cost report filing period." For hospitals that report resident counts to Medicare, the most recently filed cost

report reflects the average of the actual FTE resident count for that filing period and the prior two cost report filing periods.

Hospitals that do not report resident counts to Medicare are to report the number of FTE residents trained during their most recently completed Medicare cost report filing period. This number reflects the average of the actual FTE residents trained during the most recently completed Medicare cost report filing period and the prior two cost report filing periods.

If the cost reporting period ends less than 5 months prior to the CHGME program's application deadline, hospitals that do not report residents to Medicare may use either the FTE resident count in the most recently completed cost report year or the FTE resident count in the previous cost report year. The determination of the 5-month period is based on the Medicare program's policy that hospitals have 5 months from the completion of the cost report year to file the Medicare cost report.

Several respondents objected to the use of the FFY for calculating the FTE resident count in the FFY 2000 CHGME application process. They asserted that most hospitals use either an academic year (7/1-6/30) or the Medicare cost reporting period.

Prior to amendment, the CHGME statute required the Secretary to make CHGME payments "for each of *fiscal years* 2000 and 2001" (emphasis added). For FFY 2000, the Department interpreted "fiscal year" to mean that payments were to be based on the FTE resident counts for FFYs (from October 1 of each year through September 30 of the following year), rather than the hospital cost reporting period or the hospital academic year.

To assist hospitals in determining FTE resident counts based on the FFY required in the FFY 2000 CHGME application, tables contained in the application materials instructed hospitals on how to convert their data to the applicable FFY. In addition, the Department presented four technical assistance workshops to hospitals and related association staff to give advice on how to complete the necessary application forms and how to convert an academic/hospital accounting period to a FFY.

#### *Counting FTE Residents in FFY 2000*

The methodology described by the Department in its June 19, 2000, **Federal Register** notice regarding the determination of a hospital's FTE resident count, generated considerable comment. Some respondents felt that it

was unfair to allow hospitals that had not previously filed Medicare cost reports to recreate their resident count. Some respondents felt that all hospitals should be allowed to recreate their resident count because of the significant inaccuracies in the previously filed Medicare cost reports. Other respondents questioned the Department's proposed adoption of the Medicare GME resident counting methodology. Simpler methods were suggested that would eliminate the use of "caps", or "rolling averages."

Section 340E(c)(1)(B) of the CHGME statute requires that the average number of FTE residents in the hospital's approved residency programs be determined according to section 1886(h)(4) (42 U.S.C. 1395ww(h)(4)) of the Social Security Act. This section is implemented by regulations at 42 CFR 413.86(f), (g), (h), and (i). These provisions indicate: how to determine the total and weighted numbers of FTE residents; the required documentation and certification for purposes of application for Medicare payments by hospitals for cost reporting periods; and the application of the "caps" (described in sec. 1886(h)(4)(f) of the Social Security Act; 42 U.S.C. sec. 1395ww(h)(4)(f)) and "rolling averages" (described in sec. 1886(h)(4)(g) of the Social Security Act; 42 U.S.C. sec. 1395ww(h)(4)(g)) to FTE resident counts prior to weighting. The Department notes that dental and podiatric residents are not included in the resident FTE cap. Hospitals must certify the accuracy of their FTE resident counts and apply the Medicare cap and rolling average to this count. Since the Act specifically references use of caps and rolling averages for DME, the Department does not have discretion to accept the respondents' suggestion.

For FFY 2000 applications, the Department was more flexible in the FTE resident counts accepted due to the short time frame hospitals had from publication of the June 19, 2000, **Federal Register** notice to the application deadline. Most respondents agreed with the Department's requirement that resident counts from Medicare hospital cost reports determine the CHGME resident counts. However, some objected because they may have under reported their resident counts on their past Medicare cost reports. Since the Medicare utilization and reimbursement was so low among the children's hospitals, many Fiscal Intermediaries (FIs) and hospitals paid little attention to the counts submitted or to correcting and auditing the counts.

According to regulations, the FIs have 180 days from the reopening request

and submission of all supporting data to finalize a cost report. Several hospitals wanted the Department to instruct Medicare FIs to respond quickly to their requests to reopen cost reports and adjust resident counts to more accurately reflect the actual training programs.

The Department contacted the majority of hospitals' FIs, and, in accordance with existing rules and regulations, many of the CHGME program applicant hospital's FIs were able to expedite the review and revision process for new FTE resident counts. On average, these reviews were completed within a one-week period.

Clearly, hospitals that have never submitted Medicare cost reports have no comparable validated counts to submit on their CHGME program applications. Therefore, these hospitals must determine FTE resident counts through the methodology described in the application. The accuracy of the resident counts, as all information filed by hospitals, is subject to audit by the Department and the General Accounting Office.

Several respondents requested clarification on counting time spent by a resident on required research. The Department is using the Medicare regulation 42 CFR 413.86(f) to apply to counting research time. In brief, the research conducted by the resident must be part of the residency program and the resident must carry out the research in either:

1. The children's hospital (clinical or bench research); or
2. In a nonhospital site where the research involves direct patient care and the salaries of both the resident and the supervising faculty are paid by the children's hospital.

Respondents were concerned that the CHGME program could inadvertently cause a shift in the primary care focus of pediatric GME. General pediatrics residency training programs require a significant amount of training (at least 50%) to occur in ambulatory care settings such as freestanding clinics and physicians' offices. Respondents asserted that the CHGME program payments should reflect the cost of training in both inpatient and outpatient settings.

The Department recognizes the important of the primary care focus in general pediatrics residency training, which implements the Department's own goal of improving public access to primary care. All resident training in ambulatory care settings may be included in the resident FTE resident count as long as the hospital funds the faculty and resident cost of this training

through a written agreement between the hospital and the ambulatory care setting, according to 42 CFR 413.86(f)(3) and (4).

One respondent requested that the Department provide a waiver of the requirement to obtain written agreements with participating ambulatory care sites. They contend that since children's hospitals were not able to claim significant GME payments, many failed to obtain written agreements with their participating ambulatory care sites.

Hospitals will not be required to submit such written agreements to the Department with their annual applications to the CHGME program. Hospitals should be prepared to produce such agreements in any subsequent audit carried out by the Department.

One respondent was concerned about what they perceived as the "arbitrary 5-year limit" for the initial residency periods.

The Department follows Medicare rules regarding the use of the initial residency period. The Medicare rules reduce counts for all hospitals that train residents beyond their initial residency period (i.e., fellows) with regard to the DME and IME portions of the GME reimbursement. In addition, this 5-year limit is not arbitrary, but rather reflective of the minimum number of years required for the resident to reach initial board eligibility.

Several respondents suggested that the Department require that hospitals submit their Intern and Residents Information System (IRIS) diskettes as the primary source of data for validating their resident counts. This source would then provide a consistent method for verifying submitted counts. Another respondent indicated that the data on the IRIS diskettes are rarely completed correctly, frequently contained inaccurate data and duplicated resident counts between two hospitals.

The department recognizes that the submission of IRIS diskettes by hospitals to the CHGME program may potentially reduce the administrative burden of reporting among those hospitals that submit IRIS diskettes for Medicare. There are several reasons, however, that the use of the IRIS diskettes as the primary source of data for the CHGME program would not be feasible: (1) Not all hospitals participating in the CHGME program submit IRIS diskettes to Medicare so there would not be a consistent source of information for all hospitals participating in the program; (2) information required by the CHGME program in its FFY 2000 applications

included some information not available on the IRIS diskettes—the "conversion" of FTE resident counts based on the Medicare cost reporting period to an FTE resident count based on the FFY; (3) the CHGME program will not have access to the IRIS diskettes from those hospitals that may potentially be double counting residents so there would be no way to validate the IRIS data from hospitals participating in the program.

One respondent commented that the Medicare provision for FTE adjustments in the context of an affiliated group cap requires a retroactive adjustment to account for situations in which the group remains under its aggregate cap, but individual hospitals exceed their individual caps (allowable under Medicare rules, so long as the aggregate cap is not exceeded). This respondent proposed that the FFY 2000 and 2001 counts would need to be adjusted after audits of the respective hospital cost reports. The respondent stated that since the Department proposed no reconciliation for FFY 2000, the hospital might be disadvantaged.

The Department is aware that it would be difficult for hospitals to estimate adjustments to their aggregate cap. In FFY 2000, there were no children's hospitals claiming an adjustment to their cap based on a written affiliation agreement. Given the recent legislative changes, hospitals will no longer have to estimate adjustments to their aggregate cap. Hospitals will report the actual adjustment made to the aggregate cap as reported on their Medicare cost reports.

One respondent questioned the accuracy of examples B and D on page 37988 of the **Federal Register** notice of June 19, 2000. The Department clarifies these examples as follows:

**Example B:** One respondent questioned the accuracy of the 1999 resident count. This example is correct as written. The two residents added to the hospital count for the period 7/1/99 to the end of the cost reporting year 12/31/99 would add 1.0 FTE to the count because the residents only were counted for one-half of the cost reporting year. One-half of two FTEs equals one FTE.

**Example D:** The respondent stated that the 1999 resident count would not be reduced if the hospital is incurring all or substantially all of the training costs for the three residents in the continuity clinic. The Department agrees with the respondent's observation; however, this example demonstrates how to estimate the number of FTEs in 1996, when there was a substantial change to the number of FTEs trained. To determine the number of FTEs trained during the 1996

cost report year, subtract the 1.5 FTEs which were added to the program in 1997 from the 1999 number of 25 FTEs to arrive at the cap of 23.5 FTEs.

*Proposed Criteria for Determining FTE Resident Counts Beginning in FFY 2001*

The Department invites comments on the following proposed criteria for determining FTE resident counts. The comments will be considered by the Department in developing final criteria for determining FTE resident counts to be used for the purposes of the CHGME program in determining payment to eligible hospitals. These final criteria will be published in a subsequent **Federal Register** notice and applied to the CHGME program beginning in FFY 2001.

The Department wants to use the most accurate and valid data it can obtain on a hospital's resident counts. Beginning in FFY 2001, for hospitals that report residents to Medicare, the application requirement will be as follows:

1. For the most recent cost reports ending on or before December 31, 1996, a hospital must report the latest settled FTE resident count or a preliminary FI determined resident count. All preliminary FI determined counts must be determined according to HCFA and Medicare criteria. Hospitals may not use the "preliminary" numbers that were used for the FFY 2000 CHGME program unless those FTE resident counts have since become finalized or are validated according to HCFA and Medicare standards.

2. For all other settled cost reports, a hospital must report the latest settled count. For a settled report that has been reopened, a hospital must report the latest settled count or, if available, the most recent "preliminary" FI determined FTE count.

3. For cost reports which have never been settled, a hospital must report, in order of decreasing priority:

- a. The most recent "preliminary" FI determined FTE resident count;
- b. The "amended" FTE resident count; or
- c. The "as filed" FTE resident count.

Resident count requirements remain unchanged for hospitals that do not report residents to Medicare but have been operating a residency training program. If these hospitals wish to revise their FTE resident counts, they must submit a detailed explanation of the revision with supporting documentation. For hospitals that have previously filed Medicare cost reports, the Department will use the cost reports filed with the FIs to verify the resident counts submitted.

*Proposed Criteria for "New Children's Teaching Hospitals"*

Because of the amendment revising the reporting of residents using the most recently filed Medicare cost report, the Department will need to propose a method for "new children's teaching hospitals" to report residents for application for funding under the CHGME program. Accordingly, the Department invites comments on the proposed criteria for reporting FTE residents by new children's teaching hospitals. The comments will be considered by the Department in developing final criteria for determining FTE resident counts in "new children's teaching hospitals". These final criteria will be published in a subsequent **Federal Register** notice and applied to the CHGME program beginning in FFY 2001.

The Department defines a "new children's teaching hospital" as a children's hospital that began training residents from an already existent residency training program, less than three cost report periods prior to the FFY in which CHGME payments are being made. In order to participate in the CHGME program, a "new children's teaching hospital" must meet all necessary eligibility criteria.

These "new children's teaching hospitals" are distinct from those teaching hospitals that are participating in a new medical residency training program, defined under 42 CFR 413.86(g)(9) as "a medical residency that receives initial accreditation by the appropriate accrediting body or begins training residents on or after January 1, 1995." Medicare regulations at 42 CFR 413.86(g)(6)(i) and (g)(7) set forth criteria for applying the "caps and rolling averages" in these teaching hospitals with new residency training programs.

*Establishing the Cap*

"New children's teaching hospitals" that did not train residents during the most recent cost report period ending on or before December 31, 1996, would have a cap of zero. These hospitals may receive an adjustment to their cap through an affiliation agreement specifying an aggregate cap as described in 63 FR 26338, published May 12, 1998, which establishes the process for application of an aggregate FTE cap in accordance with section 1886(h)(4)(H) of the Social Security Act.

To the extent that it is reasonable and feasible, the CHGME program will implement the HCFA final rule cited above. If a "new children's teaching hospital" elects to establish the cap

through an affiliation agreement, it must comply with 63 FR 26338, published May 12, 1998, in accordance with section 1886(h)(4)(H) of the Social Security Act. For purposes of the CHGME program, however, the following exceptions to the HCFA final rule are proposed; these exceptions would be in effect only during the first year of a hospital's application for the CHGME program.

(1) For the first year of the affiliation agreement, an effective date must be specified for purposes of the CHGME program. The effective date does not need to be July 1 for purposes of the CHGME program. However, for the first year of the agreement, an effective date of July 1 will apply for purposes of the Medicare program (63 FR 26338, published May 12, 1998, in accordance with section 1886(h)(4)(H) of the Social Security Act.). Subsequent to the first year of the affiliation agreement, the effective date must comply with the above cited **Federal Register** final rule which specifies a date for all affiliation agreements.

(2) The affiliation agreement must be for a minimum of 1 year and must include a full academic year (July 1–June 30 period).

(3) The effective date and length of the affiliation agreement for an aggregate cap must be clearly documented in the agreement.

(4) The affiliation agreement must be filed with all the necessary HCFA fiscal intermediaries and HRSA.

"New children's teaching hospitals" will calculate their FTE resident count using the full value of the cap as determined by the affiliation agreement. The Department recognizes that the cap in "new children's teaching hospitals" first Medicare cost report may not agree with the cap specified by the affiliation agreement as Medicare does not apply an affiliation agreement for an aggregate cap until July 1 (63 FR p. 26338, published May 12, 1998, in accordance with section 1886(h)(4)(H) of the Social Security Act.) As a children's hospital's cost report period may not be July 1–June 30, it may potentially receive a prorated cap for its first Medicare cost reporting period.

*Establishing FTE Resident Counts and Payments*

In general, the FTE resident count from each hospital reflects the residents trained during the Medicare cost report period, limited by the unweighted FTE resident count from the most recent cost report period ending on or before December 31, 1996 (the cap). Payments to each hospital are based on the average of the FTE resident count for the

Medicare cost report and the prior two cost reports (3-year rolling average). The Department proposes that the "new children's teaching hospitals" training residents who were originally trained in a program that received and will continue to receive funds under the CHGME program wait until they have completed a Medicare cost report period before applying for payments from the CHGME program. These hospitals would also need to apply the 3-year rolling average consistent with Medicare regulations. Over a 3-year period, the "new children's teaching hospital" will gradually increase the number of FTE residents that can be claimed on the CHGME application as the children's hospital that previously received during for those FTE residents gradually decreases its resident count.

The Department proposes the following methodology for determining FTE resident counts and payment for "new children's teaching hospitals" training residents that were never previously claimed for CHGME payment:

1. Since payments under the CHGME program are based on FTE resident counts from a completed cost report filing period, "new children's hospitals" training residents never previously claimed for CHGME payment that have not completed a cost report filing period at the time of the CHGME program application would not have an FTE resident count to report to the program. The Department proposes that these "new children's teaching hospitals" submit FTE resident counts to the CHGME program according to the following methodology in their initial application:

a. Divide the number of FTE residents trained from the effective date, specified for purposes of the CHGME program, of the affiliation agreement to the application deadline by the number of days during this period to produce the average number of FTEs per day.

b. Multiply the average number of FTEs per day by the number of days the hospital will train residents during the FFY in which payments are being made.

2. After the initial application year, a "new children's teaching hospital" training residents that were never previously claimed for CHGME payment will submit its actual FTE resident count from the most recently completed Medicare cost report period rather than using the 3-year rolling average. Once these hospitals have completed three Medicare cost report periods, the 3-year rolling average will apply.

Hospitals eligible for the CHGME program participating in a new medical residency training program, defined

under 42 CFR 413.86(g)(9), will follow Medicare regulations regarding the determination of their cap and 3-year rolling average (42 CFR 413.86(g)(6)(i) and (g)(7)). If the hospital has not completed a Medicare cost report period to submission of the CHGME application, it will follow the methodology described above for "new children's teaching hospitals" training residents not previously claimed by the CHGME program in the calculation of its FTE resident count.

#### VI. Determining Direct Medical Education Payments

##### *Wage Adjustment in Standardizing Per Resident Amounts*

The per resident amount applicable to a specific children's teaching hospital (prior to pro-rata reduction) is determined by multiplying the Medicare PPS labor-related share of the per resident amount by the FY 1999 hospital wage index and adding the non-labor related share to the result. Respondents expressed concern regarding use of the PPS labor-related share to standardize wages in determining the national standard per resident amount because the pediatric population is not represented in the wage index calculations. They asserted that since children's hospitals are PPS exempt and are not required to complete the wage index portion of the Medicare cost report, this factor does not reflect the children's hospital population.

The Secretary recognizes that the wage data used to develop the PPS labor-related share is based on PPS hospitals which would not include information from PPS-exempt hospitals. Accordingly, the Department analyzed Medicare cost reports to develop a more accurate estimate of the labor-related share of the per resident amount. As the analytically derived labor-related share does not vary significantly from the Medicare labor-related share, for FFY 2000 the Department used the Medicare PPS labor-related share of 71.1 percent in the calculation of direct medical education payments. In FFY 2001 and beyond, the Secretary will use the most recent Medicare PPS labor-related share calculation.

The **Federal Register** notice published in June 19, 2000, for the CHGME program announced that the Secretary would publish a computed national per resident amount in the final notice. The Secretary has determined that the national average per resident amount for cost reporting periods ending in FFY 1997 is \$67,688. After updating for inflation as specified in the statute, the

FFY 2000 national average per resident amount is \$71,709.

#### VII. Determining Indirect Medical Education Payments

The **Federal Register** notice of June 19, 2000, sought comments on the case mix measure to be used for determining IME payments. Due to lack of time, this notice omitted a detailed methodology for distribution of the IME funds. The Secretary also stated that this final **Federal Register** notice would include this methodology for public comment subject to revision in another final **Federal Register** notice.

After considering suggestions submitted by respondents, the Department is proposing IME payment methodology for FFY 2001 organized by: (1) The purpose and use of payments under the program, (2) case mix, (3) number of FTE residents, (4) teaching intensity factor, (5) patient volume, (6) outpatient services, and (7) determination of payments. Interested parties are invited to submit comments on the proposed rules for a 30-day period. After consideration of the comments, the Department will publish the final IME methodology in the **Federal Register** and apply it to the determination of IME payments beginning in FFY 2001.

##### *Purpose and Use of IME Payments*

The CHGME statute requires the Secretary to make payments for IME associated with operating approved graduate medical residency training programs for each of fiscal years 2000 through 2005. Section 340E(b)(1)(B) describes IME payments as covering "expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs."

Section 340E(d)(2) of the Act requires the Secretary to determine IME payments by considering:

1. Variations in case mix among children's hospitals; and
2. The hospitals' number of FTE residents in approved training programs.

One respondent commented that the educational purposes of the CHGME program take precedence over what he described as imitation of the Medicare system in developing the payment methodologies. This commenter recommended that the calculation for IME payments incorporate the costs associated with providing training opportunities in rural and underserved areas.

The Department agrees that the CHGME program's purpose is to provide reimbursement to children's hospitals

for costs associated with training residents.

Although the CHGME statute describes factors that the Secretary must consider in developing payment methodology, the statute does not reference the type of training, such as training in rural and underserved areas. Nevertheless, the CHGME payment methodology which incorporates the Medicare FTE resident count does allow for an adjustment to the FTE resident cap for residents training in rural areas (42 CFR 413.86(g)(4) and (11)).

One respondent expressed concern that the CHGME program payments would be disbursed only for inpatient training. The respondent stated it was essential for payments to be disbursed to children's hospitals to defray the costs of training in both inpatient and outpatient settings. The respondent cited the pediatrics Residency Review Committee of the Accreditation Council for Graduate Medical Education's requirements that at least 50 percent of resident training take place in ambulatory settings and the recommendation of the Council on Graduate Medical Education that clinical education should occur in settings representative of the environment in which graduates will eventually practice.

These payments do reflect the cost of training residents in outpatient facilities in the hospital calculation of FTE resident count. Hospitals may include residents rotating through outpatient facilities and in ambulatory outpatient clinics, as provided in 42 CFR 413.86(f)(3) and (4). However, the CHGME program has no statutory authority to prescribe how hospitals are to use the funds received from the program.

One respondent indicated that the **Federal Register** notice of June 19, 2000, did not state that the IME payments will be wage-adjusted, whereas Medicare DME and IME payments are both wage-adjusted.

The Department agrees with this comment and revised the IME calculation used in FFY 2000 and proposed for FFY 2001, accordingly. For FFY 2000, the Department incorporated a wage adjustment into the formula for calculating IME payments by adjusting the labor-related share of the hospital operating cost for geographic differences by using the hospital wage index for FFY 1999. In FFY 2001, the Department will incorporate the same wage adjustment in its calculation of IME payments.

*Determination of Case Mix*

Two respondents suggested that the case mix index (CMI) be excluded from the formula for distributing FFY 2000 funds because no standardized CMI and Diagnosis Related Group (DRG) weights exist for children's hospitals nationwide.

The Department does not have the discretion to exclude the CMI from the IME formula because the CHGME statute explicitly requires the use of case-mix in determining IME payments under the program.

The Department received several comments on the development and utilization of a uniform CMI for all hospitals applying for funding from the CHGME program, as follows:

1. Five respondents supported the use of one CMI system for determining the IME payments to eliminate inconsistency among hospitals by using a variety of case mix index systems.
2. One respondent stated that "converting" CMIs derived from different CMI systems, such as HCFA-

DRG and All-Payer Refined DRG systems, was not possible.

3. Four respondents recommended the use of the HCFA-DRG CMI system; one respondent suggested that version 15 of the HCFA-DRG system, with appropriate Medicare weights, should be used as the standard.

4. One respondent suggested providing a default value for hospitals that cannot provide a HCFA-DRG CMI.

The Department agrees that CMIs must be based on one system to assure equitable distribution of IME funds to hospitals. Due to insufficient implementation time, the Department could not establish a single CMI requirement for FFY 2000. Nevertheless, all but five of the 56 children's hospitals applying for FFY 2000 CHGME program funds were eventually able to furnish one of three versions of a HCFA-DRG CMI (versions 15, 16 or 17).

One respondent commented that case mix methodologies to be employed in determining IME payments should include both inpatient and outpatient care delivered by the hospital as well as factor in costs associated with providing

residency training in rural and urban underserved areas, to avoid creating financial incentives that reduce education in primary care pediatrics.

The Department agrees that payment systems should not produce incentives that reduce education in primary care pediatrics. However, all current case-mix systems rely totally on hospital inpatient data based on reporting for the Uniform Hospital Discharge Data System which includes only inpatient data. No present CMI reflects both inpatient and outpatient care.

For FFY 2000, the Secretary used the average of all CMIs from the 27 hospitals that furnished a CMI based on HCFA-DRG version 15 as a default CMI for those hospitals unable to furnish a HCFA-DRG CMI. For the hospitals that supplied a CMI from version 16 or 17 of the HCFA-DRGs, the Secretary adjusted the version 16 or 17 reported by the hospital by the percentage difference in the CMI between the HCFA-DRG version 15 and the reported HCFA-DRG version according to the following table.

	Average FFY 1998 relative weight (HCFA v.15)	Average FFY1999 relative weight (HCFA v. 16)	Average FFY2000 relative weight (HCFA v. 17)
All cases excluding newborn .....	0.9711	1.0005	0.9639
Percent change from v. 15 .....		13.03	1 - 0.74

<sup>1</sup> percent.

For FFY 2000, hospitals were asked to remove DRG 391, newborn births, from the calculation of their CMI. Given the time frame for CHGME program implementation in FFY 2000, it was difficult to create an accurate conversion factor including DRG 391 due in part to variability in hospitals reporting a CMI including DRG 391.

Beginning in FFY 2001, all applicant hospitals must submit a CMI, based on the discharges from the most recently completed cost report period, using HCFA-DRG Version 17 with the appropriate HCFA Version 17 weights reported to the ten-thousandth decimal place; all DRGs must be included in the calculation of this CMI. In subsequent years, the version of the HCFA-DRG to be used by hospitals will be updated annually.

If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to the CHGME program, it would base its CMI on discharges from the day it became eligible for the CHGME program until the CHGME application deadline.

While the Department recognizes that the HCFA-DRG based CMI was not designed to be used with children's hospitals, this CMI system has been proposed as the most reasonable choice. Currently, the most commonly used case mix index system is based on CMIs. This system, however, does not exist for outpatient services. For future use, the Department intends to investigate the feasibility of developing a case mix index that is more reflective of the relative resource utilization experienced by children's hospitals in both an inpatient and an outpatient setting.

*Determining the Number of FTE Residents for IME Payments*

One respondent stated that resident counts should not be used as a separate factor because it is already included in the measure of teaching intensity, and the purpose of IME payments is to compensate for higher patient care costs, not the number of residents.

The Department agrees that resident counts should be incorporated only in the teaching intensity measure in the IME formula. The IME formula used in FFY 2000 and proposed for FFY 2001

and future years include the resident count only in the teaching intensity measure.

Many respondents provided comments concerning the difficulty hospitals anticipated in reopening their Medicare cost reports and making any necessary corrections to their FTE resident counts used to develop caps and rolling averages.

The June 19, 2000, **Federal Register** notice proposed using an unweighted FTE resident count for the IME portion of the payment and to apply the caps and rolling averages to the IME resident count, consistent with Medicare's application to its IME count. However, during the application process, the administrative difficulty of obtaining an unweighted FTE count from October 1, 1997, to September 30, 2000, became clear. The unweighted resident FTE count was not reported on the HCFA-2552, E-3, Part IV worksheet until the Medicare cost report period beginning on or after October 1, 1997. For some hospitals, this occurred as late as their 1999 Medicare cost report. While it would have been possible to eventually determine the unweighted count for all

the years necessary in order to calculate a 3-year rolling average, it would have been additionally administratively burdensome to children's hospitals, fiscal intermediaries and HRSA. As a result, the payments for FFY 2000 would have been delayed.

To resolve these difficulties, for FFY 2000, the Department did not apply either the caps or the rolling averages to the unweighted resident FTE count in calculating the IME payments. Since the CHGME statute does not require application of "caps and rolling averages" to the FTE resident count for IME payment (as it does for the DME payment), the Department calculated the unweighted FTE resident count from the application forms and the cost reports.

In addition, the Department's June 19, 2000, **Federal Register** notice stated that the resident count for the IME portion would be based upon 42 CFR 412.105(a)(1). That regulation was cited in error because it refers to the determination of a ratio rather than an actual number.

For FFY 2001, the Secretary believes that hospitals will have had sufficient notice and time to adjust their unweighted FTE counts from 1996 through 1999 and to obtain their unweighted numbers from their FIs. Therefore, beginning with FFY 2001, the Secretary will apply the "caps and rolling averages" consistent with Medicare regulation 42 CFR 412.105(f), with the exception of 42 CFR 412.105(f)(1)(ii)(A) as it refers to the "PPS sections" of the hospital, in calculating IME payments.

#### *Factoring in Teaching Intensity*

The **Federal Register** notice of June 19, 2000, proposed the addition of a teaching intensity factor to the statutorily required case-mix and FTE resident count in determining IME payments. The Secretary used the current Prospective Payment System (PPS) operating teaching intensity factor of 6.5 percent per 0.1 interns and residents-to-bed ratio (IRB) to determine IME payments for FFY 2000.

The Department calculated the IRB using the unweighted FTE resident count and the number of beds reported by each hospital to Medicare for the most recently completed fiscal year. For those hospitals that did not report this information to Medicare, the Department used the number of available beds on July 1, 2000.

According to Medicare regulations at 42 CFR 412.105(b), the Department defined "hospital beds" as "available beds," which are beds that are permanently maintained for inpatients in rooms and wards, excluding beds and bassinets in the healthy newborn nursery.

Several respondents suggested measures of teaching intensity in the formula for determining IME payments to hospitals. Two recommended using a resident-to-bed ratio, and two recommended a resident-to-average daily census (RADC) ratio. One respondent recommended a resident-to-bed ratio, stating that either ratio was feasible but noted that Medicare uses a resident-to-bed ratio. One respondent recommended the RADC ratio stating that, the ADC is more appropriate because it measures actual activity, while the number of beds might not change even when the patient volume changes.

For FFY 2001, the Department invites comment on:

1. The proposed continuation of the use of the Medicare IRB-based teaching intensity factor in the calculation of IME payments. The CHGME program would use the most current PPS IRB in its calculation of IME payments;

2. Application of a cap on the IRB ratio, similar to the cap applied by the Medicare program, 42 CFR 412.105(a)(1), whereby the ratio may not exceed the ratio for the hospital's most recent prior cost reporting period. Application of this cap will not be initiated until FFY 2002 due to the proposed change in the definition of bed count;

3. Suggestions on alternative teaching intensity factors, such as the Medicare RADC-based teaching intensity factor (2.8 percent per 0.1 percent increase in RADC ratio) or any other analytically justified teaching intensity factor; and

4. The proposed definition of "bed count" to be used in calculating the Medicare IRB teaching intensity factor—the sum of all available beds per day in the most recently completed cost report filing period, including beds and bassinets in the healthy newborn nursery, divided by the number of days in that period. If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to CHGME program, it would base its "bed count" on the sum of all available beds per day, including beds and bassinets in the healthy

newborn nursery, in the period from the day it became eligible for the CHGME program until the CHGME application deadline, divided by the number of days in that period.

In addition, the Department intends to explore for future proposal the development of other measures of teaching intensity which may be more appropriate for children's hospitals.

#### *Patient Volume*

Since the IME payment is cover "expenses associated with the treatment of more severely ill patients and the additional costs relating to teaching residents in such programs," the patient volume in a particular hospital is an important factor in its calculation. For FFY 2000, the Department used inpatient discharges from the hospital's most recently completed fiscal year as the measure of patient volume for IME payments. Beginning in FFY 2001, the Department will use inpatient discharges for the hospital's most recently completed Medicare cost report filing period as the measure of patient volume for IME payments.

If a children's hospital eligible to participate in the CHGME program has not completed a Medicare cost report period prior to submission of an application to the CHGME program, its patient volume will be calculated by the following methodology:

- a. Divide the number of inpatient discharges from the date the hospital became eligible to the CHGME application deadline by the number of days during this period to produce the average number of discharges per day.

- b. Multiply the average number of discharges per day by the number of days the hospital will provide inpatient care as a hospital eligible to participate in the CHGME program during the FFY in which payments are being made.

#### *Outpatient Services*

Since a large component of training programs in children's hospitals involves training in ambulatory outpatient settings, the Department will explore the development of a factor to indicate the resources associated with training in outpatient settings. Any such factor will be proposed for comment in a subsequent **Federal Register** notice.

#### *Determining IME Payments to Hospitals*

For FFY 2000, the Department used the following formula to calculate IME payments:

$$\text{IME Pay}_i = Z * \frac{\text{NoD}_i * \text{CMI}_i * (\text{WI}_i * .711 + .289) * 1.6 \left( (1 + \text{residents}_i\text{-to-bed}_i \text{ ratio})^{.405} - 1 \right)}{\sum_{i=1}^n \text{NoD}_i * \text{CMI}_i * (\text{WI}_i * .711 + .289) * 1.6 \left( (1 + \text{residents}_i\text{-to-bed}_i \text{ ratio})^{.405} - 1 \right)}$$

Where:

i = individual hospital  
 n = the total number of hospitals participating in the CHGME program  
 WI = area wage index for hospital<sub>i</sub>  
 NoD = number of discharges for hospital<sub>i</sub>  
 CMI = average case mix index for hospital<sub>i</sub>  
 IME Pay = IME payment to individual hospital<sub>i</sub> for the CHGME program  
 Z = total funds available for IME  
 The Department used the current Medicare teaching intensity factor of 1.6((1 + residents-to-bed ration)<sup>.405</sup> - 1). Residents indicated the unweighted

actual FTE resident count during FFY 2000 without application of the cap. The bed count was based on the number of beds reported on a hospital's most recently filed Medicare cost report or the number of available beds on July 1, 2000. The bed count did not include bassinets.  
 This FFY 2000 IME payment formula used by the CHGME program was derived from the following basic formula:  
 $Y_i = X (.711 * \text{WI}_i + .289) * \text{NoD}_i * \text{CMI}_i * \text{IME}_i$   
 Where:  
 X = national average cost per case

i = individual hospital  
 WI = area wage index for hospital<sub>i</sub>  
 NoD = number of discharges for hospital<sub>i</sub>  
 CMI = average case mix index for hospital<sub>i</sub>  
 IME = IME educational adjustment factor for hospital<sub>i</sub>  
 Y = IME payment to individual hospital<sub>i</sub>  
 Because the CHGME program has a filed appropriation, a hospital's individual payment reflects its share of the sum of IME payments to all hospitals, multiplied by the total funds available for IME, as in the following formula:

$$\text{IME Pay}_i = Z * \frac{X * (.711 * \text{WI}_i + .289) * \text{NoD}_i * \text{CMI}_i * \text{IME}_i}{\sum_{i=1}^n X * (.711 * \text{WI}_i + .289) * \text{NoD}_i * \text{CMI}_i * \text{IME}_i}$$

Since the national average cost per case appears in both the numerator and denominator of the formula, it does not impact the calculation of a hospital's IME payment and may be removed from the final formula.

For FFY 2001, the CHGME program will use the same formula that was used in FFY 2000. If the PPS IRB teaching intensity factor to be used in FFY 2001 is different from 6.5 percent to .1 interns and residents-to-bed ratio, the teaching intensity factor in the equation to calculate IME payments would be altered accordingly.

*Children's Hospitals With Average Lengths of Stay Greater Than or Equal to 30 Days*

In calculating IME payments for FFY 2000, it became apparent that certain hospitals with lengths of stay greater than or equal to 30 days were significantly disadvantaged by the formula utilized to calculate the IME payments. These hospitals provided a variety of services, including rehabilitative services, that required their patients to remain as inpatients for a prolonged period of time. The Department proposes to apply an adjustment factor in the calculation of IME payments for children's hospitals with average lengths of stay greater than or equal to 30 days.

The Department found that when using the HCFA-DRG based CMI to

measure relative resource allocation in the IME payment formula, it did not adequately account for the resources required to treat patients in children's hospitals with significantly long lengths of stay because the HCFR-DRG was developed based on different classes of patients in hospitals with shorter lengths of stay. For example, functional status, which is not measured by the DRG system, accounts for systematic differences in the cost of rehabilitation stays for the same diagnosis.

Since the length of stay is a major factor in determining the relative costliness of an inpatient stay, the Department proposes an adjustment factor based on the average length of stay (ALOS) to more adequately reflect the relative costliness of patients treated by the children's hospitals with significantly long lengths of stay. For hospitals with ALOS greater than or equal to 30 days, the adjustment factor is the ALOS for the individual hospital divided by the average ALOS for all hospitals with ALOS less than 30 days.

The IME calculation will use one formula to calculate IME payments for hospitals with an average length of stay less than 30 days and a second formula to calculate payments for hospitals with an average length of stay greater than or equal to 30 days, as follows:

Where:  
 NoD=number of discharges for hospital

CMI=average case mix index for hospital using HCFA v. 17  
 LOSadj=average length of stay (ALOS) per hospital with ALOS > or = 30 days/ALOS for all hospitals with ALOS < 30 days)  
 WI=area wage index for hospital  
 IME=IME adjustment factor for hospital  
 Z=total dollars available for CHGME program IME payments  
 IME Pay=total IME payments to hospital  
 i=individual hospital with ALOS < 30 days  
 j=individual hospital with ALOS > or = 30 days  
 m=total number of hospitals with ALOS > or = 30 days participating in the CHGME program  
 n=total number of hospitals with ALOS < 30 days participating in the CHGME program  
 residents=average number of unweighted FTE residents in the most recently completed cost reporting period with application of the cap.  
 beds=sum of available beds, including beds and bassinets in the healthy newborn nursery, in the most recently completed cost report filing period, divided by the number of days in that period.

For children's hospitals with ALOS < 30 days, the following formula will be used in FY 2001 to calculate the IME payment.

$$\text{IME Pay}_i = Z * \frac{\text{NoD}_i * \text{CMI}_i * (\text{WI}_i * .711 + .289) * 1.6 \left( (1 + \text{residents}_i\text{-to-bed}_i \text{ ratio})^{.405} - 1 \right)}{\sum_{j=1}^n \text{NoD}_j * \text{CMI}_j * (\text{WI}_j * .711 + .289) * 1.6 \left( (1 + \text{residents}_j\text{-to-bed}_j \text{ ratio})^{.405} - 1 \right) + \sum_{j=1}^m \text{NoD}_j * \text{LOSadj}_j * \text{CMI}_j * (\text{WI}_j * .711 + .289) * 1.6 \left( (1 + \text{residents}_j\text{-to-bed}_j \text{ ratio})^{.405} - 1 \right)}$$

For children's hospitals with ALOS > or = 30 days, the following formula will be used in FY 2001 to calculate the IME payment:

$$\text{IME Pay}_j = Z * \frac{\text{NoD}_j * \text{LOSadj}_j * \text{CMI}_j * (\text{WI}_j * .711 + .289) * 1.6 \left( (1 + \text{residents}_j\text{-to-bed}_j \text{ ratio})^{.405} - 1 \right)}{\sum_{i=1}^n \text{NoD}_i * \text{CMI}_i * (\text{WI}_i * .711 + .289) * 1.6 \left( (1 + \text{residents}_i\text{-to-bed}_i \text{ ratio})^{.405} - 1 \right) + \sum_{j=1}^m \text{NoD}_j * \text{LOSadj}_j * \text{CMI}_j * (\text{WI}_j * .711 + .289) * 1.6 \left( (1 + \text{residents}_j\text{-to-bed}_j \text{ ratio})^{.405} - 1 \right)}$$

## VIII. Evaluation Criteria

### General Comments on Reporting

Respondents generally supported the collection of some performance data, although a number of respondents raised concerns about the potential reporting burden. Most respondents favored the use of existing hospital data systems for the reports, whenever possible. Two respondents asserted that these performance measures are unnecessary.

The Government Performance and Results Act (GPRA) requires the Department to collect, analyze and submit reports on the performance of its legislative programs. Therefore, the Department must collect information on performance measures for the CHGME program. To the extent the CHGME program is successful, aggregated hospital data reported should reflect this success. The reports will not affect the specific payment amounts made to participating hospitals.

The Department will reduce this reporting burden by eliminating the requirement for reporting rotations to rural and underserved areas. However, the Department will continue to request data on the number of FTE residents participating in children's hospital approved residency training program; the percentage of gross revenue associated with patient care; hospital total and operating margins; and patient-related operating costs. The period for which the performance goals are measured is the most recently filed Medicare cost report. Hospitals that do not file Medicare cost reports should submit data from the most recently completed Medicare cost reporting period.

### GPRA Performance Measures for CHGME Program

Beginning in FFY 2001, the CHGME program will use the following GPRA performance measures:

- Maintain the number of FTE residents receiving training in the hospitals funded by the program;
- Maintain the number of FTE residents sponsored by hospitals funded by the program;
- Monitor the proportion of the hospital's gross revenue from patient care attributed to public insurance (Medicaid, Medicare, State Children's Health Insurance Program (SCHIP)), uncompensated care, and uninsured patients;
- Monitor the percentage of hospitals, funded by the program, with negative total margins; and
- Monitor the hospital's allowable operating costs.

Some respondents requested clarification of performance elements and necessary data requirements. These data requirements are described below:

1. A "sponsoring institution" is an institution that assumes the ultimate responsibility for a graduate medical education program. According to the Accreditation Council for Graduate Medical Education (ACGME), the following are the institutional requirements for a sponsoring institution: (1) A residency program must operate under the authority and control of a sponsoring institution; (2) there must be a written statement of institutional commitment to GME that is supported by the governing authority, the administration, and the teaching staff; (3) sponsoring institution must be in a substantial compliance with the Institutional Requirements and must

ensure that their ACGME-accredited programs are in substantial compliance with the Program Requirements; and (4) an institution's failure to comply substantially with the Institutional Requirements may jeopardize the accreditation of all of its sponsored residency programs.

2. Medicaid refers to any funding provided by Title XIX including that from Medicaid HMOs. Payments for Disproportionate Share Hospitals (DSH) are also included in gross revenue for Medicare patient care.

3. State Children's Health Insurance Program (SCHIP) refers to funding provided under Title XXI.

4. "Uncompensated Care" means bad debt and charity. "Uncompensated care" does not include contractual allowances. The definition of "uncompensated care" is to be used for purposes of the CHGME program only. "Uninsured patients" means those patients that are self-pay.

For hospitals which do not file Medicare cost reports—(a) operating margin is net income from service to patients (net patient revenues – total operating expenses)/net patient revenues (total patient revenues – contractual allowances) \* 100; and (b) total margin is net income from all sources (net patient revenue + all other income – total operating-other expenses)/total hospital revenues (net patient revenues + total other income) \* 100.

For hospitals completing Medicare cost reports (HCFA-2552-96), the

margins should be calculated from Worksheet G-3:

Operating margin = (Line 5/Line 3) \* 100

Total margin = (Line 31/(Line 3 + Line 25)) \* 100

In calculating hospital operating costs, hospitals should include allowable operating costs based on Medicare cost reports.

#### **IX. Other Laws Applicable to the CHGME Program**

HHS is responsible to Congress and the U.S. taxpayers for carrying out its mission in compliance with applicable rules and regulations. HHS seeks to ensure integrity and accountability in its financial assistance programs. Applicants for and recipients of HHS funds are responsible for and must adhere to all applicable Federal statutes, regulations, and policies.

##### *Legal Implication of Application*

To be considered for support, an applicant must be an eligible entity and must submit a complete application in accordance with the established deadline. The application must be signed by an authorized representative of the applicant organization. This person is the designated representative of the hospital in matter related to the award of HHS financial assistance. HHS does not specify the organizational location of the applicant's representative; however, it requires the designation of such an official as the focal point for the organization's responsibilities as the recipient of HHS funds.

The signature of an authorized representative of the applicant on the application attests that:

1. All information contained in the application is true and complete, and in conformance with Federal requirements and the organization's own policies and requirements; and

2. The applicant organization's intent to comply with all assurances and certifications referenced in the application.

Civil and criminal penalties apply to any certification, assurance or submission made to HHS made in connection with any program administered by HHS. Even if the application for funding is not granted, the applicant may be subject to penalties if the information contained in it, including its assurances, is found to be false, fictitious, or fraudulent. The applicable provisions are summarized below:

*The Program Fraud and Civil Remedies Act of 1986, 31 U.S.C. 3801,*

provides for the administrative imposition by HHS of civil penalties and assessments against persons who knowingly make false, fictitious, or misleading claims to the Federal Government for money, including money representing grants, loans, or benefits. A civil penalty of not more than \$5,000 may be assessed for each such claim. If a grant is awarded and payment is made on a false or fraudulent claim, an assessment of not more than twice the amount of the claim may be made in lieu of damages, up to \$150,000. Regulations at 45 CFR Part 79 specify the process for imposing civil penalties and assessments, including hearing and appeal rights.

*The Criminal False Claims Act, 18 U.S.C. 287 and 1001,* provides for criminal prosecution of a person who knowingly makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States. Such person may be subject to imprisonment of not more than 5 years and a fine.

*The Civil False Claims Act, 31 U.S.C. 2739,* provides for imposition of penalties and damages by the United States, through civil litigation, against any person who knowingly makes a false or fraudulent claim for payment, makes or uses a false record or false statement to get a false claim paid or approved, or conspires to defraud the Government to get a false claim paid. A "false claim" is any request or demand for money or property made to the United States or to a contractor, grantee, or other recipient, if the Government provides or will reimburse any portion of the funds claimed. Civil penalties of \$5,000 to \$10,000 may be imposed for each false claim, plus damages of up to three times the amount of the false claim.

45 CFR Part 74 authorizes HHS to recover funds administratively.

##### *Record Retention and Access*

Financial and programmatic records, supporting documents, statistical records, and all other records of a participating hospital that are required by the terms of the award or may reasonably be considered pertinent to the award, must be retained for the time period specified in 45 CFR Part 74, Subpart D. Access to these records is also governed by the provisions of 45 CFR Part 74, Subpart D.

##### *Audit*

HHS, or any other authorized Federal agency, may conduct an audit to determine whether the applicant hospital has complied with all governing laws and regulations in its

application for funding. Any and all information submitted to HHS by an applicant or participating hospital during or after the award of funds is subject to review in an audit.

Hospitals must comply with OMB requirements for audits. OMB Circulars explain the scope, frequency, and other aspects of the audit. OMB Circular A-128, Audits of State and Local Governments, contains the requirements for audits of governmental hospitals. OMB Circular A-133, Audits of Institutions of Higher Education and Other Nonprofit Institutions, issued March 8, 1990, establishes the audit requirements for institutions of higher education and other nonprofit institutions receiving Federal awards. The main features of this Circular are as follows:

1. Nonprofit institutions receiving Federal awards of:

a. \$100,000 or more a year shall have an audit made in accordance with the Circular. However, if the awards are under one program, the institution can have either an audit made in accordance with the Circular or have an audit made of the one program only. Individual program audits must conform to the reporting requirements set forth in General Accounting Office publication, Government Auditing Standards, 1988 revision.

b. At least \$25,000 but less than \$100,000 a year must have an audit made in accordance with the Circular or the requirements of each Federal award.

c. Less than \$25,000 a year are exempt from Federal audits but must have their records available for review by Federal agencies.

An audit made in accordance with OMB Circular A-133 will be in lieu of any financial audit required under individual Federal awards. However HHS will perform any additional audits necessary to carry out its responsibilities under Federal law or regulation.

Hospitals must submit a copy of audit reports to the National External Audit Resources, HHS Office of Audit Services, 323 West 8th Street, Lucas Place, Room 514, Kansas City, MO 64105.

##### *Suspension, Termination, and Withholding of Support*

If a hospital has failed to materially comply with the terms and conditions of the CHGME program, HHS may suspend the award, pending corrective action, or may terminate the award for cause.

*Suspension:* Temporary withdrawal of a hospital's authority to obligate funds, pending either corrective action by the

hospital, as specified by HHS, or a decision by HHS to terminate the award.

*Termination:* Permanent withdrawal by HHS of a hospital's authority to obligate previously awarded funds before that authority would otherwise expire. HHS regulations at 45 CFR Part 76 provide for the debarment and suspension of individuals and institutions from eligibility to receive grants and other forms of financial assistance under HHS discretionary programs. (Also see Executive Order 12549, Debarment and Suspension.)

*Fraud, Waste and Abuse*

HHS encourages anyone who becomes aware of the existence or apparent existence of fraud, abuse, and waste of HHS financial assistance to report this to the HHS Inspector General's Office in writing or on the Inspector General's Hotline. The toll-free number is 1-800-368-5779. All telephone calls will be confidential. Address written complaints to Inspector General, HHS, Room 5250, 200 Independence Avenue SW, Washington, D.C. 20201.

*Economic and Regulatory Impact*

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA of 1980), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an

unnecessary burden. Regulations which are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

The Department has determined that the only burden this action will impose on children's hospitals is the resources required to submit an application to the CHGME program. Therefore, in accordance with the RFA and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, the Secretary certifies that this action will have a significant impact on a substantial number of small entities in that this action will provide significant funding to eligible children's hospitals. However, since this action will not impose a significant burden on a substantial number of small entities, we have not examined any alternatives for reducing the burden on children's hospitals. The Secretary has also determined that this action does not meet with criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy of Federal expenditures.

We have determined that the proposed rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, the proposed rule will not have effects on States, local and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

Further, Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this action under the threshold criteria of Executive Order 13132, Federalism, and, therefore, have determined that this action would not

have substantial direct effects on the rights, roles, and responsibilities of States.

*Paperwork Reduction Act of 1995*

In accordance with section 3507(a) of the Paperwork Reduction Act (PRA) of 1995, the Department is required to solicit public comments, and receive final Office of Management and Budget (OMB) approval, on collections of information. As indicated, in order to implement the Children's Hospital Graduate Medical Education Payment Program (CHGME), certain information is required as set forth in this notice in order to determine eligibility for payment. In accordance with the PRA, we are submitting to OMB at this time the following requirement for seeking review of these provisions. A 30-day notice was published in the **Federal Register** on November 7, 2000, to provide for public comment and to request a review of the information collection associated with CHGME.

*Collection of Information:* The Children's Hospital Graduate Medical Education Program.

*Description:* Data is collected on the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals. Hospitals will be requested to submit such information in an annual application.

*Description of Respondents:* Children's hospitals operating approved graduate medical residency training operations.

*Estimating Annual Reporting:* The estimated average annual reporting for this data collection is approximately 150 hours per hospital. The estimated annual burden is as follows:

Form name	Number of respondents	Responses per respondent	Total responses	Hours per response	Total hour burden
HRSA-99-1:					
(Annual) .....	54	1	54	99.9	5,395
(Reconciliation) .....	54	1	54	8	432
HRSA-99-2 (IME) .....	54	1	54	14	756
HRSA-99-4 (Required GPRA tables) .....	54	1	54	28	1,512
Total .....	54	1	54	.....	8095

### National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, and its successor, Healthy People 2010. These are Department-led efforts to set priorities for national attention. The CHGME program is related to the priority area 1 (Access to Quality Health Services) in Health People 2010, which is available online at <http://www.health.gov/healthypeople>.

### Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between Department education programs and programs which provide comprehensive primary care services to the underserved.

### Smoke-Free Workplace

The Department strongly encourages all award recipients to provide a smoke-free workplace and promote abstinence from all tobacco products, and Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: February 6, 2001.

**Claude Earl Fox,**

*Administrator.*

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 01-5008 Filed 2-28-01; 8:45 am]

**BILLING CODE 4160-15-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material,

and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Program Project.

*Date:* March 16, 2001.

*Time:* 9:00 a.m. to 4:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

*Contact Person:* Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892-9547, (301) 443-2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: February 21, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01-4906 Filed 2-28-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel.

*Date:* March 26, 2001.

*Time:* 11 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Room 1AS-13, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS-13H, Bethesda, MD 20892, (301) 592-2886, zacharya@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 20, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01-4907 Filed 2-28-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-14000-01-1220-AF]

#### Shooting Closure Order on North Hardscrabble Access Road in Glenwood Springs Field Office; CO

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Shooting closure order.

**SUMMARY:** This order, issued under the authority of 43 CFR 8364.1 closes public lands along the North Hardscrabble Access Road to recreational target shooting for the purpose of enhancing public safety. For this closure order, recreational target shooting is defined as the discharge of any weapon for any purpose other than the lawful taking of a game animal recognized by the State of Colorado. This order applies to public land administered by BLM in Township 5 South, Range 85 West, Section 10, Tract 80 and Lot 7, and in Section 15, Lot 2 and Lot 3, 6th Principal Meridian; Eagle County. The affected public land is generally located east and south of the Town of Gypsum, CO, off of Eagle County Spring Creek Road, 102A.

This action is in accordance with the Glenwood Springs Resource Management Plan, Record of Decision (BLM, 1984). This order, issued under the authority of 43 CFR 8364.1, is established to protect persons, property, public lands and resources.

**EFFECTIVE DATES:** The restriction shall be effective upon publication until rescinded or modified by the Authorized Officer.

**SUPPLEMENTARY INFORMATION:** Federal Register Notice CO-070-4333-13-241A,

published January 2, 1992 closed land administered by the Bureau to camping, parking and discharge of firearms to land in T 5 S, R 85 W, Tract 80, also known as Lot 2 of O.R.E.O. Subdivision, 6th Principal Meridian, within 30 feet from the centerline of the North Hardscrabble Access Road. That restriction has not been sufficient in protecting adjacent land owners from the target shooting that takes place on BLM.

The area and routes affected by this order will be posted with appropriate regulatory signs in such a manner and location as is reasonable to bring prohibitions to the attention of visitors. Information, including maps of the restricted area, is available in the Glenwood Springs Field Office at the addresses shown below.

Persons who are exempt from the restrictions include: (1) Any Federal, State, or local officers engaged in fire, emergency and law enforcement activities; (2) BLM employees engaged in official duties.

#### Penalties

Any person who fails to comply with the provisions of this order may be subject to penalties outlined in 43 CFR 8360.0-7. Violations of this closure are punishable by a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

**ADDRESSES:** Field Office Manager, Glenwood Springs Field Office, Bureau of Land Management, 50629 Highway 6 & 24, P.O. Box 1009, Glenwood Springs, CO 81602.

**FOR FURTHER INFORMATION CONTACT:** Dorothy Morgan (970) 947-2806.

Anne Huebner,

Glenwood Springs Field Office Manager.  
[FR Doc. 01-4968 Filed 2-28-01; 8:45 am]

**BILLING CODE 4310-JB-P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[MT-020-1310-AC]

#### Notice of Meeting

**AGENCY:** Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Eastern Montana Resource Advisory Council will have a meeting on April 5, 2001 at the Hampton Inn Conference Room, 5110 Southgate Drive, Billings, Montana starting at 8 a.m. Primary agenda topics include off-highway vehicle use and

travel management planning with updates on the Oil and Gas EIS, and Pompeys Pillar.

The meeting is open to the public and the public comment period is set for 11 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

#### FOR FURTHER INFORMATION CONTACT:

Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233-2831.

**SUPPLEMENTARY INFORMATION:** The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: February 20, 2001.

Todd S. Christensen,

Assistant Field Manager, Resources.

[FR Doc. 01-4969 Filed 2-28-01; 8:45 am]

**BILLING CODE 4310-SS-U**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[NM-080-1430-EU; Serial No. NMNM-104295]

#### Notice of Realty Action

**SUMMARY:** The following land has been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at no less than the appraised fair market value of \$9,000.00. The land will not be offered for sale until at least 60 days after the date of this notice.

T. 23 S., R. 25 E., NMPM  
Sec. 12: NE $\frac{1}{4}$ NE $\frac{1}{4}$ , containing 40 acres.

The land is hereby segregated from appropriation under the public land laws, including the mining laws. The segregative effect of the notice of realty action shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the

segregation, or 270 days from the date of publication, whichever occurs first.

The land is being offered by direct sale to the City of Carlsbad for expansion/upgrade of their water facility. The subject lands are adjacent to the City's #6 water well. The subject lands are not required for any other Federal purpose and meet the disposal criteria of the regulations contained in 43 CFR 2710.03(a) and 43 CFR 2711.3-3(a)(2).

The patent, when issued, will contain certain reservations to the United States, including the mineral estate, and will be subject to prior existing rights. Detailed information is available for review at the Carlsbad Field Office, 620 E. Greene, Carlsbad, NM 88220.

For a period of 45 days from March 1, 2001, interested parties may submit comments to Bobbe Young, Lead Realty Specialist, at P.O. Box 1778, Carlsbad, NM 88220. Any adverse comments will be evaluated by the Field Manager, who may vacate or modify this realty action and issue a final determination. In absence of objections, this realty action will become the final determination of the Department of the Interior.

Dated: February 12, 2001.

Leslie A. Theiss,

Carlsbad Field Manager.

[FR Doc. 01-4970 Filed 2-28-01; 8:45 am]

**BILLING CODE 4310-VA-U**

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## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of new information collection (OMB Control Number 1010-NEW).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "Form MMS-144, Rig Movement/Skid Notification Report."

**DATES:** Submit written comments by April 30, 2001.

**ADDRESSES:** Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170-4817. If you wish to e-mail comments, the e-mail address is:

rules.comments@mms.gov. Reference "Information Collection, form MMS-144, 1010-New" in your e-mail subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

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 record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:**

Alexis London, Rules Processing Team, telephone (703) 787-1600. You may also contact Alexis London to obtain a copy at no cost of the new form MMS-144.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form MMS-144, Rig Movement/Skid Notification Report.

*OMB Control Number:* 1010-New.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop oil and gas resources in the OCS; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resources development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources offshore; and preserve and maintain free enterprise competition. Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health." This authority and responsibility are among those delegated to MMS, under which we issue regulations governing oil and gas and sulphur operations in

the OCS. The reporting and recordkeeping of information required by our 30 CFR part 250 regulations are mandatory. To facilitate and standardize required reporting, MMS has developed various forms. MMS also issues Notices to Lessees and Operators, which provide clarification, description, or interpretation of requirements contained in regulations, or implement supplemental or regional procedures.

This ICR concerns regulations in 30 CFR 250 subparts D, E, and F, and specifically in sections 401(g), 502, and 602, on equipment movement on and off an offshore platform or from well to well on the same offshore platform. The requirement for operators to notify MMS of rig movements is not specifically stated in §§ 250.401(g), 250.502, and 250.602. However, because of the increased volume of activity in the Gulf of Mexico Region (GOMR), it is now standard MMS procedure to require this notification as a condition of approval for drilling, well workover, recompletion, or abandonment operations. Because of this we have included the rig movement notification with the other the general information collection requirements of these regulations under OMB control numbers 1010-0053, 1010-0067, and 1010-0043. Also, MMS specifically included this reporting notification in the pending revised subpart D proposed regulations (§ 250.404), which OMB approved under 1010-0141.

In reporting rig movement, respondents will generally FAX the information or leave a telephone message. Because the current regulations do not specifically state what information MMS needs and MMS has not issued standard instructions on what to report, in many cases, the respondents have not provided sufficient information for MMS to identify the operator and type of activity. This then requires follow-up telephone calls or messages to the respondent to obtain the needed information. The current non-standard format for rig movement reporting has resulted in increased inspection flight time due to incorrect information. To avoid this recurring problem, the GOMR has developed a new form MMS-144, "Rig Movement/SKID Notification Report." The MMS District Offices use the information reported to accurately ascertain the arrival and departure of all rigs in OCS waters. The accurate location of these rigs is necessary to better facilitate the scheduling of inspections by MMS personnel.

Responses are mandatory. No questions of a "sensitive" nature are

asked and no proprietary information is involved.

*Frequency:* The frequency is "on occasion."

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* We estimate respondents will average 6 minutes to fill out and complete form MMS-144. The total annual estimate is 180 burden hours.

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* We have identified no "non-hour cost" burden associated with form MMS-144.

*Comments:* The PRA (44 U.S.C. 3501, *et seq.*) 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. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "\* \* \* to provide notice \* \* \* and otherwise consult with members of the public and affected agencies concerning each proposed collection of information \* \* \*". Agencies must specifically solicit comments to:

(a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burden.

Agencies must estimate both the "hour" and "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. We have not identified any non-hour cost burdens for the information collection aspects of form MMS-144. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital

equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Dated: February 23, 2001.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*  
[FR Doc. 01-4982 Filed 2-28-01; 8:45 am]

**BILLING CODE 4310-MR-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Outer Continental Shelf Oil and Gas and Sulphur Operations

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice.

**SUMMARY:** MMS has scheduled its annual Industry Awards Program and Luncheon to honor outstanding companies for their exemplary safety and pollution prevention records during the year 2000.

**DATES:** April 4, 2001.

**FOR FURTHER INFORMATION CONTACT:** Debbie O'Brien, 703-787-1579, [deborah.o'brien@mms.gov](mailto:deborah.o'brien@mms.gov); or Marcia Oliver, 703-787-1043, [marcia.oliver@mms.gov](mailto:marcia.oliver@mms.gov).

**SUPPLEMENTARY INFORMATION:** The MMS will host its annual Industry Awards Program and Luncheon on Wednesday, April 4, 2001. It will be held at the Westin Galleria Hotel in Houston, Texas. This is the 19th year that MMS has honored outstanding companies for their exemplary safety and pollution prevention records, and the third year for our industry awards program. To recognize performance during the year 2000, the following awards will be presented:

- *Corporate Leadership Award (CORLA)*—Recognizes corporation employees for performing an act or service that enhances MMS's ability to meet Offshore Minerals Management or Minerals Revenue Management (MRM) mission objectives. An MMS CORLA recipient must be judged by MMS to have performed an exemplary act or

service that helps MMS meet its mission objectives.

- *Corporate Citizen Award (CORCIT)*—Recognizes OCS lessees that are outstanding in the areas of offshore operating performance and fiscal responsibility. An MMS CORCIT recipient must be judged by MMS to be among the safest and most committed to timely and accurate financial reporting. Contributions to overall industry performance are considered.

- *Secretary of the Interior's Minerals Revenues Stewardship Award*—Recognizes companies committed to timely and accurately filing mineral lease revenue and production reports with the MRM Program.

- *Safety Award for Excellence (SAFE)*—Recognizes exemplary performance by oil and gas lessees, operators, and contractors. It also highlights to the public that companies conduct offshore oil and gas activities safely and in a pollution-free manner, even though such activities are complex and carry a significant element of risk. The SAFE Award Categories are as follows:

- High Activity Operator
- Moderate Activity Operator
- Contractor—Drilling
- Contractor—Production

Please visit our web site at <http://www.mms.gov/awards>. The site has information on registration, luncheon, and hotel reservations. Or, you may contact Ms. O'Brien or Ms. Oliver for further information.

Dated: February 26, 2001.

**E.P. Danenberger,**

*Chief, Engineering and Operations Division.*  
[FR Doc. 01-4983 Filed 2-28-01; 8:45 am]

**BILLING CODE 4310-MR-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-921 (Preliminary)]

### Folding Gift Boxes From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Institution of antidumping investigation and scheduling of a preliminary phase investigation.

**SUMMARY:** The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731-TA-921 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry

in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of folded gift boxes, provided for in subheading 4819.20.00.40 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by April 6, 2001. The Commission's views are due at the Department of Commerce within five business days thereafter, or by April 13, 2001.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

**EFFECTIVE DATE:** February 20, 2001.

**FOR FURTHER INFORMATION CONTACT:** Valerie Newkirk (202-205-3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

### SUPPLEMENTARY INFORMATION:

*Background.*—This investigation is being instituted in response to a petition filed on February 20, 2001, by counsel on behalf of Simkins Industries, Inc., New Haven, CT, and Field Container Company, L.P., Elk Grove Village, IL.

*Participation in the investigation and public service list.*—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in

Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Conference.*—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on March 13, 2001, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202-205-3190) not later than March 9, 2001, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

*Written submissions.*—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before March 16, 2001, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document

filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: February 23, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-5002 Filed 2-28-01; 8:45 am]

**BILLING CODE 7020-02-P**

## INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-355 and 731-TA-659-660 (Review)]

### Grain-Oriented Silicon Electrical Steel From Italy and Japan

#### *Determination*

On the basis of the record<sup>1</sup> developed in the subject five-year reviews, the United States International Trade Commission determines,<sup>2</sup> pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the countervailing duty order on imports of grain-oriented silicon electrical steel from Italy and revocation of the antidumping duty orders on imports of grain-oriented silicon electrical steel from Italy and 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.

#### *Background*

The Commission instituted these reviews on December 1, 1999 (64 FR 67318) and determined on March 3, 2000, that it would conduct full reviews (65 FR 13989, March 15, 2000). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on August

<sup>1</sup> The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> Vice Chairman Deanna Tanner Okun and Commissioners Lynn M. Bragg and Jennifer A. Hillman dissenting.

16, 2000 (65 FR 50004).<sup>3</sup> The hearing was held in Washington, DC, on January 11, 2001, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in this investigation to the Secretary of Commerce on February 23, 2001. The views of the Commission are contained in USITC Publication 3396 (February 2001), entitled Grain-Oriented Silicon Electrical Steel from Italy and Japan: Investigations Nos. 701-TA-355 and 701-TA-659-660 (Review).

Issued: February 26, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-5004 Filed 2-28-01; 8:45 am]

**BILLING CODE 7020-02-U**

## INTERNATIONAL TRADE COMMISSION

[Investigation No. TA-204-4]

### Wheat Gluten; Notice of Commission Determination to Conduct a Portion of the Hearing in Camera

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Closure of a portion of a Commission hearing to the public.

**SUMMARY:** Upon request of counsel for the Wheat Gluten Industry Council, the Commission has determined to conduct a portion of its hearing in the above-captioned investigation scheduled for February 27, 2001, in camera. See Commission rules 201.13(m) and 201.35(b)(3) (19 CFR 201.13(m) and 201.35(b)(3)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

**FOR FURTHER INFORMATION CONTACT:** William Gearhart, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone 202-205-3091, e-mail [wgearhart@usitc.gov](mailto:wgearhart@usitc.gov). Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202-205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission believes that counsel has justified the need for a closed session. Counsel seeks a closed session to provide a full discussion of information

<sup>3</sup> As revised by 65 FR 75302, December 1, 2000.

relating to new products and industry adjustment efforts and to certain customer information of two domestic producers. Because such discussions will necessitate disclosure of confidential business information (CBI), they can only occur if a portion of the hearing is held in camera. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by parties, with questions from the Commission. In addition, the hearing will include in camera sessions for confidential presentations by the two producers and for questions from the Commission relating to the CBI. For any in camera session the room will be cleared of all persons except for those company officials and their counsel who are authorized to have access to the CBI at issue. See 19 CFR 201.35(b)(1), (2). The time for the party's presentations in the in camera session will be taken from its overall allotment for the hearing. All persons planning to attend the in camera portions of the hearing should be prepared to present proper identification.

**Authority:** The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in Inv. No. TA-204-4, Wheat Gluten, may be closed to the public to prevent the disclosure of CBI.

Issued: February 23, 2001.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 01-5003 Filed 2-28-01; 8:45 am]

**BILLING CODE 7020-02-U**

## DEPARTMENT OF JUSTICE

[AAG/A Order No. 220-2001]

### Privacy Act of 1974; System of Records; Delay of Effective Date

**AGENCY:** Federal Bureau of Investigation, Department of Justice.

**ACTION:** Notice; delay of effective date.

**SUMMARY:** This action delays the effective date of the amendments to the Privacy Act notice for the National Instant Criminal Background Check System (Justice/FBI-018) published on January 22, 2001, at 66 FR 6676.

**DATES:** The effective date of the amendments to the Privacy Act notice for the National Instant Criminal Background Check System (Justice/FBI-018) published on January 22, 2001, at

66 FR 6676, is delayed for 60 days, from March 5, 2001, until May 4, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Mary E. Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, 1400 National Place Building, Washington, DC 20530.

**SUPPLEMENTARY INFORMATION:** The Department is delaying the effective date of the amendments to the Privacy Act notice published for the National Instant Criminal Background Check System (Justice/FBI-018) on January 22, 2001, at 66 FR 6676, for 60 days, from March 5, 2001 to a new effective date of May 4, 2001. This delay in effective date is being done in order to conform with the delayed effective date of the final rule entitled "National Instant Criminal Background Check System Regulation" published in the **Federal Register** on January 22, 2001, at 66 FR 6470, which is the basis for the amendments made in the Privacy Act notice. In accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the **Federal Register** on January 24, 2001 (66 FR 7702), the effective date of the final rule is being delayed for 60 days, from March 5, 2001, until May 4, 2001. The temporary 60-day delay in effective date is necessary to give Department of Justice officials the opportunity for further review and consideration of new regulations, consistent with the Assistant to the President's memorandum of January 20, 2001. The delay of effective date of the final rule entitled "National Instant Criminal Background Check Regulation" is published in the Rules section of this issue of the **Federal Register**.

Dated: February 13, 2001.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

[FR Doc. 01-4980 Filed 2-28-01; 8:45 am]

**BILLING CODE 4410-02-M**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99-04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

**DATES:** Requests for copies must be received in writing on or before April 16, 2001. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99-04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY**

**INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge \$.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740-6001. Requests also may be transmitted by FAX to 301-713-6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:**

Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001. Telephone: (301) 713-7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99-04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled

under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000-02, which suspended Bulletin 99-04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99-04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99-04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99-04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99-04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a

cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted. Further information about the disposition process is available on request.

**Schedules Pending**

1. National Labor Relations Board, Agency-wide, (N9-25-01-1, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to activities common to most agency offices. Included are electronic copies associated with such matters as records management, personnel administration, financial management, and program administration. Also included are back-up tapes of these electronic copies. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 1, of the NLRB Files Management and Records Disposition Handbook.

2. National Labor Relations Board, Agency-wide, (N9-25-01-2, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to such matters as committee management, organization planning, program evaluations, audits and investigations, forms and directives management, and automated data processing projects. Also included are back-up tapes of these electronic copies. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 2, of the NLRB Files Management and Records Disposition Handbook.

3. National Labor Relations Board, Agency-wide, (N9-25-01-3, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to such matters as emergency preparedness, telecommunications, publications and printing, graphics and audiovisual products, security, space management, and travel and transportation. Also included are back-up tapes of these electronic copies. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 3, of the NLRB Files Management and Records Disposition Handbook.

4. National Labor Relations Board, Agency-wide, (N9-25-01-4, 3 items, 3 temporary items). Electronic copies of records created using electronic mail

and word processing that relate to personnel management, including such matters as employee performance and utilization, position classification and job evaluation, employee training, equal employment opportunity, and labor-management relations. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 4, of the NLRB Files Management and Records Disposition Handbook

5. National Labor Relations Board, Agency-wide, (N9-25-01-5, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to such matters as public relations, congressional relations, and implementation of the Freedom of Information and Privacy Acts. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 5, of the NLRB Files Management and Records Disposition Handbook.

6. National Labor Relations Board, Agency-wide, (N9-25-01-6, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to general financial matters, budget, accounting and the disbursement of funds, and payroll. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 6, of the NLRB Files Management and Records Disposition Handbook.

7. National Labor Relations Board, Agency-wide, (N9-25-01-7, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to procurement, contracts, supplies, and interagency agreements for reimbursable services dealing with these matters. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 7, of the NLRB Files Management and Records Disposition Handbook.

8. National Labor Relations Board, Agency-wide, (N9-25-01-8, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing that relate to labor relations, including general case matters, unfair labor practices, and representation proceedings. This schedule follows Model 2 as described

in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Appendix 1, Chapter 8, of the NLRB Files Management and Records Disposition Handbook and in Disposition Job Number N1-25-97-1.

Dated: February 23, 2001.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—  
Washington, DC.*

[FR Doc. 01-4909 Filed 2-28-01; 8:45 am]

**BILLING CODE 7515-01-U**

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## NUCLEAR REGULATORY COMMISSION

[Docket No. 030-04983, License No. 22-01376-02, EA-00-169]

### In the Matter of Stork/Twin City Testing St. Paul, MN; Order Imposing Civil Monetary Penalty

#### I

Stork/Twin City Testing (Licensee) is the holder of Materials License No. 22-01376-02 issued by the Nuclear Regulatory Commission (NRC or Commission) on August 2, 1999, and amended in its entirety on June 16, 2000. The license authorizes the Licensee to perform industrial radiography in accordance with the conditions specified therein.

#### II

An inspection of the Licensee's activities was conducted January 25 through February 24, 2000, and an investigation by the NRC Office of Investigations was initiated on February 7, 2000. The results of the inspection and 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 December 15, 2000. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violation.

The Licensee responded to the Notice in a letter dated December 21, 2000. In its response, the Licensee did not contest the violation, but requested reconsideration of the amount of the civil penalty based on the safety significance of the violation, the duration of the violation while Stork was involved, and that the violation occurred at only one location of use.

#### III

After considering the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined that the violation occurred as stated in the Notice, that the licensee has not provided a sufficient basis to warrant reduction of the civil monetary penalty, and that therefore the civil monetary penalty in the amount of \$11,000 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 \$11,000 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 shall also 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 such hearing shall be whether, on the basis of the findings made by the staff, this Order should be sustained.

Dated this 20th day of February 2001.

For the Nuclear Regulatory Commission.

**R.W. Borchardt,**

*Director, Office of Enforcement.*

[FR Doc. 01-4960 Filed 2-28-01; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

**[Docket No. 40-0299]**

### **Umetco Minerals Corporation**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final finding of no significant impact; Notice of opportunity for hearing.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) proposes to amend NRC Source Material License SUA-648 to authorize the licensee, Umetco Minerals Corporation (Umetco), to decommission the contaminated land associated with the operation of the uranium mill facility according to the Revised Soil Decommissioning Plan submitted September 15, 2000, as amended. The Umetco East Gas Hills site, is located in Natrona County, Wyoming, approximately 50 miles (80 kilometers) southeast of the town of Riverton, Wyoming. The mill operated from 1960 to 1979 and was dismantled in 1992. During operation, wind-blown tailings and tailings-solution from the Above-Grade Impoundment contaminated areas north of the Impoundment. A portion of the land contaminated with byproduct material was remediated (excavated) in 1993. Several changes and improvements have been proposed in the revised decommissioning plan.

An Environmental Assessment (EA) was performed by the NRC staff in support of its review of Umetco's license amendment request, in accordance with the requirements of 10 CFR part 51. The conclusion of the Environmental Assessment is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

**FOR FURTHER INFORMATION CONTACT:** Ms. Elaine Brummett, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear

Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7-C6, Washington, DC 20555. Telephone 301/415-6606.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

The Umetco Minerals Corporation (Umetco) site is licensed by the U.S. Nuclear Regulatory Commission (NRC) under Source Materials License SUA-648 to possess byproduct material in the form of uranium waste tailings as well as other radioactive wastes generated by past milling operations. The mill has been dismantled and current site activities include completion of reclamation of three disposal areas and continuation of the ground water corrective action program.

The original soil decommissioning plan was approved with additional requirements as documented in License Condition (LC) 30. The major proposed modifications in the revised plan include:

1. An improved method of gamma scanning;
2. A detailed plan for providing documentation that the regulations have been met;
3. A revised radium background value for compliance in the wind-blown area; and
4. Alternate criteria for the residual byproduct material in the channel of East Canyon Creek.

#### **Summary of the Environmental Assessment**

The NRC staff performed an appraisal of the environmental impacts associated with the revised soil decommissioning plan, in accordance with 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. The license amendment would authorize Umetco to complete soil cleanup in the wind-blown area north of the Above-Grade Impoundment and to leave small amounts of residual byproduct material in the channel of East Canyon Creek as proposed. In conducting its appraisal, the NRC staff considered the following information: (1) Umetco's 1999 and 2000 submittals supporting the license amendment request, including a risk assessment for East Canyon Creek; (2) previous environmental evaluations of the facility; (3) data contained in required environmental monitoring reports; (4) existing license conditions; (5) results of NRC staff site visits and inspections of the Umetco facility; and (6) consultations with the U.S. Fish and Wildlife Service, the U.S. Bureau of Land Management, and the Wyoming State Historic Preservation Officer. The

technical aspects of the revised reclamation plan are discussed separately in a Technical Evaluation Report (TER) that will accompany the final agency licensing action.

The results of the staff's appraisal are documented in an EA placed in the docket file. Based on its review, the NRC staff has concluded that there are no significant environmental impacts associated with the proposed action.

#### **Conclusions**

The NRC staff has examined actual and potential impacts associated with the revised decommissioning plan, and has determined that the requested amendment of Source Material License SUA-648, authorizing implementation of the revised soil decommissioning plan, will: (1) Be consistent with requirements of 10 CFR part 40, appendix A; (2) not be inimical to the public health and safety; and (3) not have long-term detrimental impacts on the environment.

The following statements summarize the conclusions resulting from the staff's environmental assessment, and support the FONSI:

1. An acceptable environmental and effluent monitoring program is in place to monitor effluent releases and to detect if applicable regulatory limits are exceeded. Radiological effluents from facility operations have been and are expected to remain below the regulatory limits.

2. Present and potential health risks to the public and risks of environmental damage from the proposed decommissioning were assessed. Given the remote location, limited activities requested, small area of impact, and past activities on the site, the staff determined that the risk factors for health and environmental hazards are insignificant.

3. Potential risks to the public and the environment from the byproduct material proposed to remain in the channel of East Canyon Creek (an ephemeral stream) were evaluated. Data on radionuclides and heavy metals in soil, water, vegetation, and animals were reviewed. Also, staff considered the contributions of these constituents from the near-by uranium mining activities and from natural uranium deposits in the creek bank. The staff determined that the current and long-term hazards from byproduct material in the creek channel are insignificant. The cost of remediation, risks to remediation workers, and the environmental harm (erosion, affect on wildlife including endangered species, etc) that would result from excavation of soil in the creek channel far out-weigh any slight

health benefit that might arise as a result of remediation in this area. Also, the level of protection would be equivalent to meeting the soil radium standard, to the extent practicable.

#### Alternatives to the Proposed Action

The proposed action is to amend NRC Source Material License SUA-648, for decommissioning of the windblown tailings area and application of alternative criteria (no remediation) for the residual byproduct material in a portion of the East Canyon Creek channel, as requested by Umetco. Therefore, the principal alternatives available to NRC are to:

1. Approve the license amendment request as submitted; or
2. Amend the license with such additional conditions as are considered necessary or appropriate to protect public health and safety and the environment; or
3. Deny the amendment request.

Based on its review, the NRC staff has concluded that the environmental impacts associated with the proposed action do not warrant either the limiting of Umetco's future operations or the denial of the license amendment. Additionally, in the TER prepared for this action, the staff has reviewed the licensee's proposed action with respect to the criteria for reclamation, specified in 10 CFR part 40, appendix A, and has no basis for denial of the proposed action. Therefore, the staff considers that Alternative 1 is the appropriate alternative for selection.

#### Finding of No Significant Impact

The NRC staff has prepared an EA for the proposed renewal of NRC Source Material License SUA-648. On the basis of this assessment, the NRC staff has concluded that the environmental impacts that may result from the proposed action would not be significant, and therefore, preparation of an Environmental Impact Statement is not warranted.

The EA and other documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852.

#### Notice of Opportunity for Hearing

The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and

Issuance of Orders. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

(1) The applicant, Umetco Minerals Corporation, PO 1029, Grand Junction, CO 81502;

(2) The NRC staff, by delivery to the General counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or

(3) By mail addressed to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

Any hearing that is requested and granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" in 10 CFR part 2, subpart L.

Dated at Rockville, Maryland, this 23rd day of February 2001.

For the Nuclear Regulatory Commission.

**Philip Ting,**

*Chief, Fuel Cycle Licensing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 01-4959 Filed 2-28-01; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 125th meeting on March 21-23, 2001, at 11545 Rockville Pike, Rockville, Maryland, Room T-2B3. The entire meeting will be open to public attendance. The schedule for this meeting is as follows:

#### Wednesday, March 21, 2001

A. 8:30-10 a.m.: *Opening Statement/Planning and Procedures* (Open)—The Chairman will open the meeting with brief opening remarks. The Committee will then review items under consideration at this meeting and consider topics proposed for future ACNW meetings.

B. 10:15-10:35 a.m.: *DOE's Status Report on Key Technical Issue (KTI) Resolution* (Open)—The Committee will receive an update by a DOE representative as to the current status of the KTI resolution.

C. 10:35-12 Noon: *Key Technical Issues—Vertical Slice Report* (Open)—The Committee members will present a report on their assigned KTIs.

D. 1-2 p.m.: *Partial Release of a Reactor Facility or Site for Unrestricted Use* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the partial release of a reactor facility or site for unrestricted use.

E. 2-3 p.m.: *License Termination Plan Review—Lessons Learned* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding lessons learned from experience with the License Termination Plan.

F. 3:15-5 p.m.: *Commission Meeting Preparation* (Open)—The Committee will discuss the topics scheduled for its March 22, 2001 meeting with the Commission.

G. 5-7 p.m.: *Discussion of Proposed ACNW Reports* (Open)—The Committee will discuss proposed ACNW reports on Entombment, Partial Release of Reactor Facility or Site for Unrestricted Use, Lessons Learned from Experience with the License

Termination Plan, and High Level Waste Chemistry.

#### Thursday, March 22, 2001

H. 8:30–8:40 a.m.: *Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

I. 8:40–10 a.m.: *Commission Meeting Preparation* (Open)—The Committee will continue to discuss topics scheduled for its meeting with the Commission on March 22, 2001.

J. 10:30–12 Noon.: *Meeting with the NRC Commissioners* (Open)—The Committee will meet with the NRC Commissioners, Commissioners' Conference Room, One White Flint North to discuss ACNW's Integrated Strategy to Evaluate Staff's Overall License Review Capability and Staff's Sufficiency Review of DOE's Site Recommendation Considerations Report (SRCR), and related matters.

K. 1–2:30 p.m.: *Proposed Revisions to 10 CFR Part 71, "Packaging and Transportation of Radioactive Material"* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revisions to 10 CFR Part 71.

L. 2:45–5:30 P.M.: *ACNW 2001 Action Plan* (Open)—The Committee will finalize the ACNW Action Plan for CY 2001, review its self assessment for the year 2000, and other activities relevant to the conduct of Committee business.

#### Friday, March 23, 2001

M. 8:30–8:35 A.M.: *Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

N. 8:35–10 a.m.: *Meeting Reports* (Open)—The Committee will hear reports from the members and staff on meetings attended since the 124th ACNW Meeting, including the Waste Management 2001 Symposium, NWTRB Meeting, and joint meeting of the ACRS/ACNW Subcommittee on integrated safety assessment.

O. 10:15–1 p.m.: *Discussion of Proposed ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

P. 1–1:30 p.m.: *Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on

October 11, 2000 (65 FR 60475). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Howard J. Larson, ACNW, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8 a.m. and 5 p.m. EST.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at <http://www.nrc.gov/ACRSACNW>.

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: February 23, 2001.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 01–4957 Filed 2–28–01; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, Thermal-Hydraulic Phenomena, and Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy, Thermal-Hydraulic Phenomena, and Reliability and Probabilistic Risk Assessment will hold a joint meeting on March 16, 2001, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Friday, March 16, 2001—8:30 a.m. until the conclusion of business.*

The Subcommittees will discuss the status of risk-informed revisions to the technical requirements of 10 CFR 50.46 for emergency core cooling systems. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr.

Michael T. Markley (telephone 301/415-6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 22, 2001.

**James E. Lyons,**

*Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 01-4956 Filed 2-28-01; 8:45 am]

**BILLING CODE 7590-01-P**

## **NUCLEAR REGULATORY COMMISSION**

### **Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting**

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on March 15, 2001, Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be closed to public attendance to discuss proprietary information per 5 U.S.C. 552b(c)(4) pertinent to the Westinghouse Electric Corporation.

The agenda for the subject meeting shall be as follows:

*Thursday, March 15, 2001—1:00 p.m. until the conclusion of business.*

The Subcommittee will review the Westinghouse Electric Corporation's proposed approach to address thermal-hydraulic issues pertaining to its AP1000 passive plant design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be

considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Westinghouse Electric Corporation, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301-415-8065) between 7:30 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: February 22, 2001.

**James E. Lyons,**

*Associate Director for Technical Support.*

[FR Doc. 01-4958 Filed 2-28-01; 8:45 am]

**BILLING CODE 7590-01-P**

## **POSTAL SERVICE BOARD OF GOVERNORS**

### **Sunshine Act Meeting**

#### **Board Votes to Close March 1, 2001, Meeting**

By paper vote on February 22 and 23, 2001, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for March 1, 2001, in Washington, DC, via teleconference.

**ITEM CONSIDERED:** 1. Opinion and Further Recommended Decision of the Postal Rate Commission in Docket No. R2000-1.

**PERSONS EXPECTED ATTEND:** Governors Ballard, Daniels, del Junco, Dyhrkopp, Fineman, Kessler, McWherter, Rider and Walsh; Postmaster General Henderson, Deputy Postmaster General Nolan, Secretary to the Board Hunter, and General Counsel Gibbons.

**GENERAL COUNSEL CERTIFICATION:** The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

**CONTACT PERSON FOR MORE INFORMATION:** Requests for information about the meeting should be addressed to the

Deputy Secretary of the Board, William T. Johnstone, at (202) 268-4800.

**William T. Johnstone,**

*Deputy Secretary.*

[FR Doc. 01-5126 Filed 2-27-01; 2:13 pm]

**BILLING CODE 7710-12-M**

## **SMALL BUSINESS ADMINISTRATION**

### **Program Announcement for the Paul D. Coverdell Drug-Free Workplace Program**

**AGENCY:** Small Business Administration.

**ACTION:** Program announcement.

**SUMMARY:** The U.S. Small Business Administration (SBA) plans to issue program announcement #SBDC-01-0002 to invite applications from eligible intermediaries in accordance with the Drug-Free Workplace Act of 1998 (Act). The authorizing legislation is the Small Business Act, section 21(c)(3)(T) and section 27, 15 U.S.C. 648(c)(3)(T) and 654, (Title IX of Pub. L. 105-277).

The Act permits the SBA to make grants to eligible intermediaries for the purpose of providing financial and technical assistance to small businesses seeking to establish drug-free workplace programs. In establishing these DFWP programs, as contemplated by the Act, eligible intermediaries should provide outreach to the small business community and provide additional voluntary education for parents. Outreach must include educating small businesses on the benefits of a drug-free workplace and encouraging small business employers and employees to participate in drug-free workplace programs. Education for parents must include teaching them how to keep their children drug-free.

All applicants must meet the definition of "Eligible Intermediary" as defined in the Act. Any applicants not meeting the definition will be considered non-responsive and their proposals will not be technically evaluated. The Act defines "Eligible Intermediary" as an organization that:

1. Has at least two years of experience in carrying out drug-free workplace programs;
2. Has a drug-free workplace policy in effect;
3. Is located in a State, the District of Columbia, or a territory of the United States; *and*
4. Has as its purpose the development of comprehensive drug-free workplace programs, or supplying drug-free workplace services, or providing other forms of assistance and services to small businesses.

SBA is looking for applications that include innovative and creative approaches to address the Drug-Free Workplace Act of 1998. The grants should be viewed as an opportunity to develop a community-wide collaborative effort in which a plan for a system of action aimed at reducing drug abuse in small businesses can serve as a national demonstration model.

SBA will select successful applicants through a competitive process. Evaluation criteria will be included in the program announcement. The successful applicants will receive a 12-month grant award to provide financial and technical assistance to small businesses seeking to implement drug-free workplace programs.

**DATES:** SBA will mail the program announcement to interested parties in mid-March 2001. The closing date will be 30 days later. SBA Headquarters must receive the applications/proposals by the date and time that will be specified in the program announcement. Interested parties may also view the Program Announcement, minus attachments, online at: <http://www.sba.gov/news/drugfree>.

**FOR FURTHER INFORMATION CONTACT:** Joan Bready, Office of Small Business Development Centers, SBA, at (202) 205-7384 or Mina Bookhard, Office of Procurement and Grants Management, SBA, at (202) 205-7080.

Dated: February 21, 2001.

**Johnnie Albertson,**

*Associate Administrator, Small Business Development Centers.*

[FR Doc. 01-4921 Filed 2-28-01; 8:45 am]

**BILLING CODE 8025-01-U**

## DEPARTMENT OF STATE

[Public Notice 3591]

### Information Collection Under Emergency Review; Nonimmigrant V Visa Application

**AGENCY:** Department of State.

**ACTION:** Notice of information collection under emergency review: Nonimmigrant V Visa Application.

**SUMMARY:** The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

*Type of Request:* New Information Collection.

*Originating Office:* Bureau of Consular Affairs, Department of State.

*Title of Information Collection:* Nonimmigrant V Visa Application.

*Frequency:* Once per respondent.

*Respondents:* Spouses and children of lawful permanent residents awaiting the approval of a visa petition, the availability of an immigrant visa, the issuance of an immigrant visa, or the approval of an application for adjustment of status, provided that the petitioner filed a petition before December 21, 2000 and that three years have passed since the petition was filed.

*Estimated Number of Respondents:* 300,000.

*Average Hours Per Response:* 1 hour.

*Total Estimated Burden:* 300,000 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by February 9, 2001. If granted, the emergency approval is valid only for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395-5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until April 9, 2001. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your 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 FURTHER INFORMATION CONTACT:** Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Eric Cohan of the Directorate for Visa Services, U.S. Department of State, Room L708, SA-1, Washington, DC 20520-0106, or by fax at (202) 663-3897.

Dated: February 2, 2001.

**Linda Donahue,**

*Acting Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, U.S. Department of State.*

[FR Doc. 01-4990 Filed 2-28-01; 8:45 am]

**BILLING CODE 4710-06-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2001-8982]

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Andante*.

**SUMMARY:** As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before April 2, 2001.

**ADDRESSES:** Comments should refer to docket number MARAD-2001-8982. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

**Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Andante*. Owner: Jeffrey W. Lippitt and Jeannette L. Lippitt.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Length 37.9 feet; Breadth 12.3 feet; Depth 6.0 feet; Gross Tonnage 13; Net Tonnage 12."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The Vessel will be used part-time to provide sailboat rides, sailing vacations and sailing lessons to small groups of 12 passengers or less.

We are planning to dock the Vessel in Greenport, New York for the next two years and then we will be spending a year doing coastal cruising on the U.S. east coast and we would like to be able to generate income during that time to cover some of our expenses. In the future, we are planning to move the Vessel to Lake George, near our home. East Coast of the United States from Maine to Florida Lake George, New York."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1979. Place of construction: Republic of China.

(5) A statement on the impact this waiver will have on other commercial

passenger vessel operators. According to the applicant: "We are aiming at the low volume, high-end market. Our primary means of advertising will be on the internet and word of mouth. We expect to draw a small amount of business from a wide geographic area, and therefore doubt that our operation will interfere with other business. We are both employed full-time in non-boating related jobs and we will continue in them."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Our mission is to introduce people to the joys of sailing and to teach them the sailing and boating skills necessary to become responsible boat owners. I expect that some of these people will become interested in purchasing sailboats in the range of 18 to 30 feet. It would be speculative however, to project how many actual boat sales will result from our business."

Dated: February 26, 2001.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 01-4992 Filed 2-28-01; 8:45 am]

**BILLING CODE 4910-81-P**

**DEPARTMENT OF TRANSPORTATION****Maritime Administration**

**[Docket Number MARAD-2001-8981]**

**Requested Administrative Waiver of the Coastwise Trade Laws**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Dragonlord*.

**SUMMARY:** As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that

uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before April 2, 2001.

**ADDRESSES:** Comments should refer to docket number MARAD-2001-8981. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

**Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested. *Name of vessel:* *Dragonlord*. *Owner:* Herman Bips III.

(2) *Size, capacity and tonnage of vessel. According to the applicant:* "31'2½", 6 Passengers, 6 Net Tons."

(3) *Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:* "Teach sailing locally and local

charters." "Tampa Bay and Gulf Waters from Tampa to Key West."

(4) *Date and Place of construction and (if applicable) rebuilding. Date of construction:* 1969. *Place of construction:* Belleville Marine Yards, Belleville, Ontario.

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:* "This waiver will not have an impact on other commercial passenger vessel operators. No one does charters in the immediate Tampa Bay area, and other charters exist in the Gulf waters but not based in Tampa."

(6) *A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:* "This waiver will not have an impact on any US Shipyards. Many foreign vessels are used for charter operations."

Dated: February 26, 2001.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 01-4994 Filed 2-28-01; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number: MARAD-2001-8979]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel HERON.

**SUMMARY:** As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR Part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before April 2, 2001.

**ADDRESSES:** Comments should refer to docket number MARAD-2001-8979. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

#### Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name of vessel: HERON. Owner: Aram S. Nersesian.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Gross Tonnage: 25 (measured by standard documentation standards and formulas), Net Tonnage: 22, Length: 51.5 feet, Breadth: 15.2 feet, Depth: 6.5 feet, Hull Material: Aluminum."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

I would use this vessel for day or overnight charters; I would find corporate sponsorship to cover costs of taking inner city kids, kids at risk, cancer kids and families, etc. for day/overnight charters; I would create a sailing club taking paying members for day/overnight sails; I would provide a sailing platform to bring scholars and journalists of similar scientific and social backgrounds together for 'think tank' programs. Geographic region: entire United States Coastline, Great Lakes, all Inland Rivers and Waterways, and Puerto Rico and US Virgin Islands.

(4) *Date and Place of construction and (if applicable) rebuilding. Date of construction:* 1982. *Place of construction:* La Rochelle, France.

(5) *A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:*

A waiver for my personally owned vessel will have absolutely no impact on other commercial passenger vessel operators. I have no plans to create an ongoing charter business of any kind. My use would follow my own interests to bring people together who have an interest in sailing, to use the boat to give disadvantaged children and their families an opportunity to get out on the water, or to create a floating 'think tank' for scholars, scientists and journalists. These uses are completely original and not commercially based, and would therefore not compete in any way with existing commercial operations.

(6) *A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:*

This waiver, also, will have no impact on U.S. shipyards, other than to provide ongoing business for these shipyards in the way of maintenance and upgrades to this vessel which is already in and documented in United States waters.

Dated: February 26, 2001.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 01-4991 Filed 2-28-01; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket Number MARAD-2001-8983]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel *Sortilege*.

**SUMMARY:** As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before April 2, 2001.

**ADDRESSES:** Comments should refer to docket number MARAD-2001-8983. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested

parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### **Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Sortilege*. Owner: Willie M. Moxley.

(2) Size, capacity and tonnage of vessel. According to the applicant: "Net 55 tons Gross 59 tons."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

"We intend to provide a Galveston Bay moonlight cruise for guests of our bed & breakfast." "Galveston Port at Pier 22 into Galveston Bay and back to Pier 22."

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1985. Place of construction: Taipei, Taiwan, Republic of China.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "We see no impact on any other commercial passenger vessel operators as there is only one in our immediate area. The other operator is Harbour Tours and it provides tours of our harbour and a dolphin watch for paying customers."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "There are no shipyards in our area and I see no impact that we could have on US shipyards."

Dated: February 26, 2001.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration*

[FR Doc. 01-4993 Filed 2-28-01; 8:45 am]

**BILLING CODE 4910-81-P**

#### **DEPARTMENT OF TRANSPORTATION**

##### **Maritime Administration**

**[Docket Number MARAD-2001-8980]**

##### **Requested Administrative Waiver of the Coastwise Trade Laws**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel *Southern Cross*.

**SUMMARY:** As authorized by Pub. L. 105-383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105-383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before April 2, 2001.

**ADDRESSES:** Comments should refer to docket number MARAD-2001-8980. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th St., SW., Washington, DC 20590-0001. You may also send comments electronically via the Internet at <http://dmses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR-832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202-366-2307.

**SUPPLEMENTARY INFORMATION:** Title V of Pub. L. 105-383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested

parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

#### **Vessel Proposed for Waiver of the U.S.-Build Requirement**

(1) Name of vessel and owner for which waiver is requested. Name of vessel: *Southern Cross*. Owner: Peter Murray.

(2) Size, capacity and tonnage of vessel. According to the applicant:

In pursuant with reg. 46 U.S.C. 14502 Gross tonnage is 28 and net tonnage is 25. The Southern Cross is a custom built Cross design trimaran sailboat. It is 46ft long and 25.2 breadth and 9.0 depth.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant:

I intend to use the vessel as a sailing, diving, and teaching, liveaboard, for 6 passenger or less, sailing trimaran, in the area of the Florida keys, Key Largo to the Dry tortuous. I feel that this boat is unique in the fact that this is a sailing trimaran, engaged in not only sailing and diving, but I intend to use this vessel as a teaching platform, of not only sailing and diving, but a much greater concern, our environment.

(4) Date and Place of construction and (if applicable) rebuilding. Date of construction: 1975. Place of construction: Ontario, Canada.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant:

To my knowledge there are no other trimaran sailboats in my immediate area that is doing a sailing, diving and teaching liveaboard operation. Although there are other boats down in key West, which is over 90 miles away as well as in key Largo, which is 15 miles away from my area, that are doing sailing charters, there are no trimarans doing a sailing, diving and teaching liveaboard operation. Each seems to have their own

cliental, and also seem to go after localized traffic. Where I will advertise on the Internet and get my cliental from around the country. So I feel that my vessel would be a minimal financial impact if any, on other vessels in my area.

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant:

To my knowledge there are no us ship builders building a vessel similar to the southern Cross. The Southern Cross is custom built from a Norman Cross design. The vessel is constructed using a cold molded process which is very expensive and very heavy using the materials that were used in building Southern Cross. The new ship builders are using lighter materials and different designs i.e. \* \* \* catamaran design hulls, but on the other hand being an older boat and made of wood, I've already spent many hours and lots of money in local boat yards. I know for a fact this will never end, and I feel that the Southern Cross will only stimulate the economic growth of local boat yards.

Dated: February 26, 2001.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 01-4995 Filed 2-28-01; 8:45 am]

**BILLING CODE 4910-81-P**

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#### **DEPARTMENT OF THE TREASURY**

##### **Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service**

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces the date, time, and location for the quarterly meeting of the Treasury Advisory Committee on Commercial Operations (COAC), and the provisional agenda for consideration by the Committee.

**DATES:** The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Friday, March 23, 2001 at 9 a.m. at the Omni Colonnade Hotel,

located at 180 Aragon Avenue, Coral Gables, FL 33134 (Tel: 305-441-2600, Fax: 305-444-9706) The meeting is being hosted by Gilbert Lee Sandler, Sandler, Travis & Rosenberg, P.A., 5200 Blue Lagoon Drive, #600, Miami, FL 33126. The duration of the meeting will be approximately four hours (9a to 1p).

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

Timothy E. Skud, Acting Deputy Assistant Secretary, Regulatory, Tariff and Trade (Enforcement), Office of the Under Secretary (Enforcement), Telephone: (202) 622-0230.

At this meeting, the Advisory Committee is expected to pursue the following agenda. The agenda may be modified prior to the meeting.

#### **Agenda**

- (1) Merchandise Processing Fee (MPF)
- (2) CAT (Compliance Assessment Team) Sub Committee
- (3) OR & R (Office of Rules & Regulation) Sub Committee
- (4) Import Data & Customs entry Sub Committee
- (5) Port Uniformity Initiative
- (6) Customs Authorization Bills
- (7) Status of Customs & Treasury Comments on Revision to Kyoto Convention

**SUPPLEMENTARY INFORMATION:** The meeting is open to the public; however, participation in the Committee's deliberations is limited to Committee members, Customs and Treasury Department staff, and persons invited to attend the meeting for special presentations. A person other than an Advisory Committee member who wishes to attend the meeting should contact Theresa Manning at (202) 622-0220 or Helen Belt at (202) 622-0230 for pre-clearance.

Dated: February 26, 2001.

**Timothy E. Skud,**

*Acting Deputy Assistant Secretary, Regulatory, Tariff, and Trade (Enforcement).*

[FR Doc. 01-4997 Filed 2-28-01; 8:45 am]

**BILLING CODE 4810-25-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Open Meeting of Citizen Advocacy Panel, Brooklyn District**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

**DATES:** The meeting will be held Wednesday, March 28, 2001.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1-888-912-1227 or 718-488-3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday, March 28, 2001, 6 p.m. to 9:20 p.m. at the Internal Revenue Service Brooklyn Building located at 625 Fulton Street, Brooklyn, NY 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Eileen Cain. Mrs. Cain can be reached at 1-888-912-1227 or 718-488-3555. The public is invited to make oral comments from 8:30 p.m. to 9:20 p.m. on Wednesday, March 28, 2001.

Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1-888-912-1227 or 718-488-3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY, 11201. The Agenda will include the following: various IRS issues.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: February 16, 2001.

**Cathy VanHorn,**

*National Project Manager, Taxpayer Advocate Service.*

[FR Doc. 01-4778 Filed 2-28-01; 8:45 am]

**BILLING CODE 4830-01-P**



# Federal Register

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**Thursday,  
March 1, 2001**

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**Part II**

## **Environmental Protection Agency**

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**40 CFR Parts 72, 74, and 78  
Acid Rain Program—Permits Rule  
Revision, Industrial Utility-Units  
Exemption; Final Rule; Proposed Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 72, 74, and 78

[FRL-6930-9]

#### Acid Rain Program—Permits Rule Revision, Industrial Utility-Units Exemption

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking direct final action to remove the provision for the industrial utility-units exemption in the regulations for the Acid Rain Program under title IV of the Clean Air Act (Act). The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological effects of acidic deposition (or acid rain) resulting from these emissions. In January 1993, EPA issued rules implementing the program, including the permits rule. In October 1997, EPA revised the permits rule in order to add, among other things, a provision establishing a limited exemption from the program for certain industrial boilers (referred to as "industrial utility-units"). One party filed a petition for review challenging the industrial utility-units exemption. On August 23, 2000, EPA and the petitioning party signed a settlement agreement addressing the exemption provision. Today, EPA is removing the industrial utility-units exemption based on a review of the record. This action is consistent with the August 23, 2000 settlement.

**DATES:** This rule is effective on May 10, 2001 without further notice, unless EPA receives adverse comment by April 16, 2001. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** *Comments:* If you submit any written comments on this proposed rule, the comments must reference Docket No. A-95-56 and must be submitted in duplicate to EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Room M-1500, Washington, DC 20460.

*Docket.* Docket No. A-95-56, containing supporting information used in developing the direct final rule, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at EPA's

Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Room M-1500, Washington, DC 20460. EPA may charge a reasonable fee for copying.

#### FOR FURTHER INFORMATION CONTACT:

Dwight C. Alpern, at (202) 564-9151, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6204J), Washington, DC 20460; or the Acid Rain Hotline at (202) 564-9089.

**SUPPLEMENTARY INFORMATION:** EPA is publishing this rule as a direct final rule because we view this as a noncontroversial amendment and anticipate no adverse comment. The rule, which removes the provision for the industrial utility-units exemption, is consistent with a settlement signed by EPA and the only party that petitioned for review of the industrial utility-units exemption. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule revision if we receive any timely, adverse comments on today's direct final rule. Today's direct final rule will be effective on May 10, 2001 without further notice unless we receive adverse comment by April 16, 2001. If we receive such adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The information in this preamble is organized as follows:

- I. Regulated Entities
- II. Background
- III. Rule Revision
- IV. Administrative Requirements
  - A. Executive Order 12866: Regulatory Impacts Analysis
  - B. Regulatory Flexibility Act: Small Entity Impacts
  - C. Unfunded Mandates Reform Act
  - D. Paperwork Reduction Act
  - E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  - F. Executive Order 12898: Environmental Justice
  - G. Executive Order 13132: Federalism
  - H. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
  - I. National Technology Transfer and Advancement Act
  - J. Submission to Congress and the General Accounting Office

#### I. Regulated Entities

Entities potentially regulated by this action are fossil-fuel fired boilers or

turbines that serve generators producing electricity for sale. Regulated categories and entities include:

Category	Examples of regulated entities
NAICS Code: 221112, Fossil Fuel Electric Power Generation.	Electric service providers, boilers and turbines from a wide range of industries.

EPA does not intend this table to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that, EPA is now aware, this action could potentially affect. This action could also affect other types of entities not listed in the table. To determine whether this action affects your facility, you should carefully examine the applicability criteria in §§ 72.6 and 76.1 and the exemptions in §§ 72.7 and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### II. Background

Under title IV of the Act, "utility units" are subject to sulfur dioxide (SO<sub>2</sub>) emission limitations (under sections 404, 405, 408, and 409) and must monitor SO<sub>2</sub>, NO<sub>x</sub>, carbon dioxide (CO<sub>2</sub>), and opacity (under section 412)<sup>1</sup>. On October 24, 1997, EPA issued a final rule establishing a limited exemption from most Acid Rain Program requirements for certain industrial boilers ("industrial utility-units") that are not cogeneration units and that generate small amounts of electricity for sale. See 62 FR 55460, 55462-55466 and 55478-55480 (October 24, 1997). A cogeneration unit is a unit that uses the same energy to produce sequentially both: Thermal energy (heat or steam) that is used for industrial, commercial, or heating or cooling purposes; and electricity.

Under the industrial utility-unit exemption in the existing rule, the owners or operators of an industrial utility-unit that is not a cogeneration unit and that meets several requirements specified in § 72.14 may apply for, and obtain from the permitting authority, an exemption from most Acid Rain Program requirements. First, the existing § 72.14 requires that the unit must have no owner or operator whose principal business is electricity

<sup>1</sup> See also section 821 of the Clean Air Act Amendments of 1990, 42 U.S.C. 7651k note (concerning monitoring of CO<sub>2</sub>).

sale, transmission, or distribution or that is a public utility subject to State or local utility regulation. Second, on or before March 23, 1993, the owners or operators of the unit must have entered into an interconnection agreement with a company whose principal business is electricity sale, transmission, or distribution or that is a public utility subject to State or local utility regulation. The agreement must require that the generator served by the unit produce electricity for sale only for incidental sales. Third, in 1985 and any year thereafter, the generator served by the unit must have actually produced electricity for sale only for incidental sales to the public utility. EPA defined "incidental sales" as annual sales not exceeding the lesser of 10 percent of the output capacity of the generator or 10 percent of the actual annual electric output of the generator. See 62 FR 55478.

### III. Rule Revision

After the issuance of the October 24, 1997 rule, one commenter filed a petition for review of the rule. On August 23, 2000, EPA and the commenter signed a settlement addressing the issues raised by the petition for review.

The commenter's units were among the 15 units that, according to EPA estimates in the October 24, 1997 rule, might qualify for the industrial utility-unit exemption. See 62 FR 55463 n.7. In connection with the petition for review, this party has raised significant questions as to whether industrial utility-units that are covered by the exemption provided in § 72.14 are actually "utility units" and would otherwise be subject to the Acid Rain Program. If such industrial utility-units would not otherwise be subject to the Acid Rain Program, then their owners or operators would not need to apply and qualify for an exemption under § 72.14. Indeed, there might not be any purpose for retaining § 72.14. In the rulemaking in which EPA proposed and then adopted § 72.14, these questions concerning whether industrial utility-units were "utility units" were not raised or addressed in any comprehensive way. Instead, the comments on the proposal and EPA's analysis of the comments focused on the details of what requirements an industrial utility-unit would have to meet in order to qualify for an exemption from most Acid Rain Program requirements. See 62 FR 55463-55466.

Under these circumstances, EPA concludes that the adoption of § 72.14 was premature. EPA believes that the

underlying questions concerning whether industrial utility-units are actually "utility units" and would otherwise be subject to the Acid Rain Program should be fully addressed before an exemption for such units is implemented. Consequently, today's rule provides that § 72.14 in the October 24, 1997 rule is vacated, all references to § 72.14 in the parts 72-78 of the regulations (40 CFR parts 72-78) implementing the Acid Rain Program under title IV of the Clean Air Act are removed, and the portion of the preamble of the December 27, 1996 proposed rule addressing § 72.14 (i.e., section I.B.4 at 61 FR 68344-68347) and of the October 24, 1997 rule addressing § 72.14 (i.e., section II.B.3 of the preamble of the October 24, 1997 rule (62 FR 55462-55466)) is no longer valid and should not be regarded as representing EPA's views.

This will provide EPA an opportunity to consider comments that industrial-utility units (as defined in § 72.14) are not affected utility units under title IV of the Act and therefore do not need an exemption from requirements of title IV. Further, EPA will not take any further action on the provisions of § 72.14 in the December 27, 1996 proposed rule or the portion of the preamble of the December 27, 1996 rule addressing § 72.14 (i.e., section I.B.4 of the preamble of the December 27, 1996 rule (61 FR 68344-68347)) without first promulgating a new notice of proposed rulemaking that proposes such action and without first providing a new opportunity for public comment on any such new notice. EPA notes that today's rule is consistent with the August 23, 2000 settlement.

### IV. Administrative Requirements

#### A. Executive Order 12866: Regulatory Impacts Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that today's final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

#### B. Regulatory Flexibility Act: Small Entity Impacts

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), Public Law 104-121, generally requires the agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant, economic impact on a substantial number of small entities. Such entities include small businesses, small organizations, and small governmental jurisdictions.

Today's final rule will not significantly change the regulatory burden or economic impact of the existing Acid Rain regulations on any parties. When EPA promulgated the industrial utility-units exemption provision, EPA concluded that the provision would not change the overall economic impact of the Acid Rain regulations and would not have a significant economic impact on a substantial number of small entities. 62 FR 55474. EPA anticipated that the exemption would cover about 15 units with 4 owners, who were unlikely to be small entities. See 62 FR 55463 n. 7. Today's final rule vacates the industrial utility-units exemption provision and similarly will not change the overall economic impact of the Acid Rain regulations and will not have a significant economic impact on a substantial number of small entities.

For these reasons, I certify that today's final rule will not have a significant, economic impact on a substantial number of small entities.

#### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule with "Federal mandates" that may 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. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

The EPA has determined that today's final rule does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector in any one year. Today's final rule will not significantly change the regulatory burden or economic impact of the existing Acid Rain regulations on any parties. When EPA promulgated the industrial utility-units exemption provision, EPA concluded that the provision would not change the overall economic impact of the Acid Rain regulations and would not have a significant economic impact on a substantial number of small entities. 62 FR 55474. EPA anticipated that the exemption would cover about 15 units with 4 owners, who were unlikely to be State, local, or tribal governments. See 62 FR 55463 n. 7. Today's final rule vacates the industrial utility-units

exemption provision and similarly will not change the overall economic impact of the Acid Rain regulations. Accordingly, little or no additional costs to State, local, or tribal governments in aggregate, or to the private sector, will result from the final rule. Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Similarly, EPA has determined that today's rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of sections 202, 203, or 205 of the UMRA.

#### D. Paperwork Reduction Act

Today's final revisions to part 72 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). OMB has previously approved the information collection requirements contained in the permits rule, 40 CFR part 72, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* See OMB Control Number 2060-0258 (Acid Rain Program ICR No. 1633.12).

Today's final rule vacates the industrial utility-units exemption and thus any information required to qualify and apply for the exemption. Any units otherwise qualifying for the exemption that are covered by the Acid Rain Program will have the same information requirements as any other units subject to the Acid Rain Program. Those requirements were previously approved.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the previously approved ICR may be obtained from Sandy

Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (28822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260-2740. Include the ICR and/or OMB number in any correspondence.

#### E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885 (April 23, 1997) applies to any rule that, EPA determines, (1) is "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final rule is not subject to Executive Order 13045 because it is not "economically significant" as defined under Executive Order 12866. Further, the Agency does not have reason to believe that the environmental health risks or safety risks addressed by this action present a disproportionate risk to children.

#### F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

Today's final rule vacates the industrial utility-units exemption provision. Neither the industrial utility-units exemption provision nor the vacating of the provision has disproportionately high and adverse human health or environmental effects on minorities and low-income populations.

#### G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255 (August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct

effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

Today’s final rule vacates the industrial utility-units exemption provision. Neither the provision nor the vacating of the provision has any federalism implications. This action will not have substantial direct effects on the States, on the relationship between the national governments and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to today’s final rule.

#### *H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the

preamble to the rule, a description of the extent of EPA’s prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments “to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.”

Today’s final rule vacates the industrial utility-units exemption provision. Neither the industrial utility-units exemption provision nor the vacating of the provision significantly or uniquely affects the communities of Indian tribal governments or imposes any direct compliance costs on those communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus

standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today’s final rule does not involve any technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

#### *J. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today’s final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. Today’s final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Parts 72, 74, and 78**

Environmental protection, Acid rain program, Administrative practice and procedure, Air pollution control, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 3, 2001.

**Carol M. Browner,**  
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 72—[AMENDED]**

1. The authority citation for part 72 continues to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651, *et seq.*

**§ 72.6 [Amended]**

2. Section 72.6 is amended in paragraph (b)(9) by revising the words “§ 72.7, § 72.8, or § 72.14” wherever they occur to read “§ 72.7 or § 72.8”.

**§ 72.9 [Amended]**

3. Section 72.9 is amended in paragraph (c)(6) by revising the words “§§ 72.7, 72.8, or 72.14” to read “§ 72.7 or § 72.8”; paragraph (g)(1) by revising the words “§ 72.7, § 72.8, or § 72.14” by to read “§ 72.7 or § 72.8”; and in paragraph (h) by revising the words “§ 72.7, § 72.8, or § 72.14” to read “§ 72.7 or § 72.8”.

**§ 72.14 [Removed]**

4. Section 72.14 is removed.

**§ 72.70 [Amended]**

5. Section 72.70 is amended in paragraph (b) by removing the words “or for issuing exemptions under § 72.14”.

**§ 72.72 [Amended]**

6. Section 72.72 is amended by removing paragraph (b)(6).

**§ 72.83 [Amended]**

7. Section 72.83 is amended in paragraph (a)(13) by removing the words “or which was approved by the permitting authority under § 72.14”.

**PART 74—[AMENDED]**

The authority citation for part 74 continues to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651, *et seq.*

**§ 74.2 [Amended]**

2. Section 74.2 is amended by revising the words “§ 72.7, § 72.8, or § 72.14” to read “§ 72.7 or § 72.8”.

**PART 78—[AMENDED]**

1. The authority citation for part 78 continues to read as follows:

**Authority:** 42 U.S.C. 7601 and 7651, *et seq.*

**§ 78.1 [Amended]**

2. Section 78.1 is amended by removing and reserving paragraph (b)(1)(v).

**§ 78.12 [Amended]**

3. Section 78.12 is amended by removing from paragraph (a)(2), after the words “an Acid Rain permit”, the words “or an exemption under § 72.14 of this chapter”.

[FR Doc. 01-721 Filed 2-28-01; 8:45 am]

**BILLING CODE 6560-50-U**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 72, 74, and 78**

[FRL-6930-8]

**Acid Rain Program—Permits Rule Revision, Industrial Utility-Units Exemption****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to remove the provision for the industrial utility-units exemption in the permits rule for the Acid Rain Program under title IV of the Clean Air Act (Act). The purpose of the Acid Rain Program is to significantly reduce emissions of sulfur dioxide and nitrogen oxides from utility electric generating plants in order to reduce the adverse health and ecological effects of acidic deposition (or acid rain) resulting from these emissions. In January 1993, EPA issued rules implementing the program, including the permits rule. In October 1997, EPA revised the permits rule in order to add, among other things, a provision establishing a limited exemption from the program for certain industrial boilers (referred to as "industrial utility-units"). One party filed a petition for review challenging the industrial utility-units exemption. On August 23, 2000, EPA and the petitioning party signed a settlement agreement addressing the exemption

provision. Today, EPA is proposing to remove the industrial utility-units exemption. This action is consistent with the August 23, 2000 settlement.

**DATES:** If you want to submit any written comments on this proposed rule, EPA must receive the written comments by April 16, 2001.

**Public Hearing:** If you want to request a public hearing, you must submit a written request, which EPA must receive by March 8, 2001. Refer to the EPA website at <http://www.epa.gov/acidrain> to determine if a public hearing has been requested and will be held.

**ADDRESSES: Comments:** If you submit any written comments on this proposed rule, the comments must reference Docket No. A-95-56 and must be submitted in duplicate to EPA's Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Room M-1500, Washington, DC 20460.

**Docket:** Docket No. A-95-56, containing supporting information used in developing the direct final rule, is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center at the above address. EPA may charge a reasonable fee for copying.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, at (202) 564-9151, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6204J), Washington, DC 20460; or the Acid Rain Hotline at (202) 564-9089.

**SUPPLEMENTARY INFORMATION:** EPA is proposing to remove the industrial utility-units exemption in the permits rule for the Acid Rain Program. In the "Rules and Regulations" section of today's **Federal Register**, we are vacating the exemption as a direct final rule because we view the vacating of the exemption as noncontroversial and anticipate no adverse comment. We have explained our reasons for the vacating of the exemption in the preamble to the direct final rule. If we receive no timely, adverse comment, we will not take further action on this proposed rule. If we receive timely, adverse comment, we will withdraw the direct final rule and it will not take effect. We will then address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

**List of Subjects in 40 CFR Parts 72, 74, and 78**

Environmental protection, Acid rain program, Administrative practice and procedure, Air pollution control, Electric utilities, Permits, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: January 3, 2001.

**Carol M. Browner,**  
*Administrator.*

[FR Doc. 01-722 Filed 2-28-01; 8:45 am]

**BILLING CODE 6560-50-U**



# Federal Register

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**Thursday,  
March 1, 2001**

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**Part III**

## **Environmental Protection Agency**

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**40 CFR Part 55**

**Outer Continental Shelf Air Regulations  
Consistency Update for Alaska; Final  
Rule; Proposed Rule**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 55**

[Alaska 001; FRL –6919–3]

**Outer Continental Shelf Air Regulations Consistency Update for Alaska****AGENCY:** Environmental Protection Agency (“EPA”).**ACTION:** Direct final rule.

**SUMMARY:** EPA is updating the Outer Continental Shelf (“OCS”) Air Regulations as they apply to OCS sources off the coast of Alaska. Requirements applying to OCS sources located within 25 miles of states’ seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (“COA”), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 (“the Act”). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is the designated COA. The intended effect of incorporating the State of Alaska requirements applicable to OCS sources in effect as of July 2, 2000, is to regulate emissions from OCS sources in accordance with the requirements onshore.

**DATES:** This direct final rule is effective on April 16, 2001 without further notice, unless EPA receives adverse comment by April 2, 2001. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of April 16, 2001.

**ADDRESSES:** Written comments should be addressed to: Dan Meyer, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations: Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101; and Environmental Protection Agency (LE–6102), 401 “M” Street, SW., Room M–1500, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Dan Meyer, Office of Air Quality (OAQ–107), U.S. EPA Region 10, 1200 Sixth Avenue,

Seattle, WA 98101, Telephone: (206) 553–4150.

**SUPPLEMENTARY INFORMATION:****Background**

On September 4, 1992, EPA promulgated the OCS air regulations and incorporated into 40 CFR part 55, Appendix A, *State of Alaska Requirements Applicable to OCS Sources*, August 21, 1992. (57 FR 40806) The OCS air regulations have been amended a number of times since original promulgation. On August 4, 1997, EPA promulgated amendments to the OCS air regulations and incorporated *State of Alaska Requirements Applicable to OCS Sources*, January 18, 1997 (62 FR 41870). EPA is today promulgating amendments to the OCS air regulations. The amendments incorporate the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000.

Pursuant to 40 CFR 55.12(b)(2), EPA is updating its OCS air regulations so as to maintain the rule’s consistency with the corresponding onshore regulations. Since EPA’s August 4, 1997, rulemaking, the State of Alaska has amended its air quality control regulations on several occasions. A number of these regulations are represented in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000. Specifically, 18 AAC 50.010, 020, 030, 035, 055, 070, 215, 225, 230, 235, 300, 325, 335, 345, 350, 365, 370, 375, 380, 400, and 990 have been revised by the State of Alaska and are now updated in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000. In addition, 18 AAC 50.341 and 385 were promulgated by the State of Alaska after August 4, 1997. These two provisions are now represented in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000. Although not previously included, EPA is today incorporating 18 AAC 50.310(m) and 350(m). The construction permit provision 18 AAC 50.310(n) requires certain new sources of air pollution to demonstrate that the proposed allowable emissions from the source will not interfere with attainment or maintenance of the ambient air quality standards or maximum allowable ambient concentrations. The operating permit provision 18 AAC 50.350(m) contains substantive requirements for insignificant sources. Insignificant sources are described at 18 AAC 50.335(q).

Although previously identified as a requirement applicable to OCS sources, EPA is today not incorporating 18 AAC 50.300(g) and (h)(11). These State of

Alaska requirements applicable to certain sources located in the Port of Anchorage are not applicable to OCS sources. Similarly, EPA is not incorporating 18 AAC 50.340(d), (e), (f), (g), and (i) although previously identified as applicable to OCS sources. These administrative or procedural requirements applicable to the State of Alaska permitting authority are not applicable to OCS sources.

EPA has evaluated the COA requirements to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

**EPA Action**

In this document, EPA takes direct final action under section 328(a)(1) of the Act, 42 U.S.C. 7627, to incorporate *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000, into 40 CFR part 55. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states’ seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55.

**Administrative Requirements***A. Executive Order 12866*

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

*B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is

preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

#### C. Executive Order 13084

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

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

#### D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop and accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various

levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of the state action.

#### F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual cost to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that my result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

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

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

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

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2001. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review not does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 55**

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 8, 2000.

**Charles E. Findley,**

*Acting Regional Administrator, Region 10.*

Title 40 of the Code of Federal Regulations, part 55, is to be amended as follows:

**PART 55—[AMENDED]**

1. The authority citation for part 55 continues to read as follows:

**Authority:** Section 328 of the Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101-549.

2. Section 55.14 is amended by revising paragraph (e)(2)(i)(A) to read as follows:

**§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.**

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(i) \* \* \*

(A) *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000.

\* \* \* \* \*

3. Appendix A to CFR part 55 is amended by revising paragraph (a)(1) under the heading "Alaska" to read as follows:

**Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference into Part 55, by State**

\* \* \* \* \*

**Alaska**

(a) \* \* \*

(1) The following requirements are contained in the *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000.

Alaska Administrative Code—Department of Environmental Conservation. The following sections of Title 18, Chapter 50:

Article 1. Ambient Air Quality Management  
18 AAC 50.005. Purpose and Applicability of Chapter. (effective 1/18/1997)

18 AAC 50.010. Ambient Air Quality Standards. (effective 6/21/1998)

18 AAC 50.015. Air Quality Designations, Classifications, And Control Regions. (effective 1/18/1997)

Table 1. Air Quality Classifications

18 AAC 50.020. Baseline Dates, Maximum Allowable Increases, And Maximum Allowable Ambient Concentrations. (effective 6/21/1998)

Table 2. Baseline Dates

Table 3. Maximum Allowable Increases

18 AAC 50.025. Visibility and Other Special Protection Areas. (effective 1/18/1997)

(a) [untitled]  
18 AAC 50.030. State Air Quality Control Plan. (effective 9/04/1998)

18 AAC 50.035. Documents, Procedures, and Methods Adopted by Reference. (effective 7/02/2000)

18 AAC 50.045. Prohibitions. (effective 1/18/1997)

18 AAC 50.050. Incinerator Emission Standards. (effective 1/18/1997)

Table 4. Particulate Matter Standards for Incinerators

18 AAC 50.055. Industrial Processes and Fuel-burning Equipment. (effective 11/04/1999)

18 AAC 50.065. Open Burning. (effective 1/18/1997)

- (a) General Requirements.
- (b) Black Smoke Prohibited.
- (c) Toxic and Acid Gases and Particulate Matter Prohibited.
- (d) Adverse Effects Prohibited.
- (e) Air Quality Advisory.
- (i) Firefighter Training: Fuel Burning.
- (j) Public Notice.
- (k) Complaints.

18 AAC 50.070. Marine Vessel Visible Emission Standards. (effective 6/21/1998)

18 AAC 50.080. Ice Fog Standards. (effective 1/18/1997)

18 AAC 50.100. Nonroad Engines/ (effective 1/18/1997)

18 AAC 50.110. Air Pollution Prohibited. (effective 5/26/1972)

Article 2. Program Administration

18 AAC 50.201. Ambient Air Quality Investigation. (effective 1/18/1997)

18 AAC 50.205. Certification. (effective 1/18/1997)

18 AAC 50.210. Potential to Emit. (effective 1/18/1997)

18 AAC 50.215. Ambient Air Quality Analysis Methods. (effective 6/21/1998)

18 AAC 50.220. Enforceable Test Methods. (effective 1/18/1997)

18 AAC 50.225. Owner-requested Limits. (effective 6/21/1998)

18 AAC 50.230. Preapproved Limits. (effective 6/21/1998)

18 AAC 50.235. Unavoidable Emergencies and Malfunctions. (effective 6/14/1998)

18 AAC 50.240. Excess Emissions. (effective 1/18/1997)

Article 3. Permit Procedures and Requirements

18 AAC 50.300. Construction Permits: Classifications. (effective 6/21/1998)

- (a) [untitled]
- (b) Ambient Air Quality Facilities.
- (c) Prevention of Significant Deterioration Major Facilities.
- (d) Nonattainment Major Facilities.
- (e) Major Facility Near a Nonattainment Area.
- (f) Hazardous Air Contaminant Major Facilities.
- (h) Modifications. (paragraphs 1 through 10)

18 AAC 50.305. Construction Permit Provisions Requested by the Owner or Operator. (effective 1/18/97)

18 AAC 50.310. Construction Permits: Application. (effective 1/18/1997)

- (a) Application Required.
- (b) Operating Permit Coordination.
- (c) General Information.
- (d) Prevention of Significant Deterioration Information.

Table 6. Significant Concentrations

- (e) Excluded Ambient Air Monitoring.
- (f) Nonattainment Information.
- (g) Demonstration Required Near A Nonattainment Area.
- (h) Hazardous Air Contaminant Information.

- (j) Nonattainment Air Contaminant Reductions.
- (k) Revising Permit Terms.
- (l) Requested Limits.
- (m) Stack Injection.
- (n) Ambient Air Quality Information.

18 AAC 50.320. Construction Permits: Content and Duration. (effective 1/18/1997)

18 AAC 50.325. Operating Permits: Classifications. (effective 6/21/1998)

18 AAC 50.330. Operating Permits: Exemptions. (effective 1/18/1997)

18 AAC 50.335. Operating Permits: Application. (effective 6/21/1998)

- (a) Application Required.
- (b) Identification.
- (c) General Emission Information.
- (d) Fees.
- (e) Regulated Source Information.
- (f) Facility-wide Information: Ambient Air Quality.
- (g) Facility-wide Information: Owner Requested Limits.
- (h) Facility-wide Information: Emissions Trading.
- (i) Compliance Information.
- (j) Proposed Terms and Conditions.
- (k) Compliance Certifications.
- (l) Permit Shield.

- (m) Supporting Documentation.
- (n) Additional Information.
- (o) Certification of Accuracy and Completeness.
- (p) Renewals.
- (q) Insignificant Sources.
- (r) Insignificant Sources: Emission Rate Basis.
- (s) Insignificant Sources: Category Basis.
- (t) Insignificance Sources: Size or Production Rate Basis.
- (u) Insignificant Sources: Case-by-Case Basis.
- (v) Administratively Insignificant Sources.
- 18 AAC 50.340. Operating Permits: Review and Issuance. (effective 1/18/1997)
  - (a) Review for Completeness.
  - (b) Evaluation of Complete Applications.
  - (c) Expiration of Application Shield.
- 18 AAC 50.341. Operating Permits: Reopenings. (paragraphs a, b, c, f, and g) (effective 6/14/1998)
- 18 AAC 50.345. Operating Permits: Standard Conditions. (effective 6/21/1998)
- 18 AAC 50.350. Operating Permits: Content. (effective 6/21/1998)
  - (a) Purpose of Section.
  - (b) Standard Requirements.
  - (c) Fee Information.
  - (d) Source-Specific Permit Requirements.
  - (e) Facility-Wide Permit Requirements.
  - (f) Other Requirements.
  - (g) Monitoring Requirements.
  - (h) Records.
  - (i) Reporting Requirements.
  - (j) Compliance Certification.
  - (k) Compliance Plan and Schedule.
  - (l) Permit Shield.
  - (m) Insignificant Sources.
- 18 AAC 50.355. Changes to a Permitted Facility. (effective 1/18/1997)
- 18 AAC 50.360. Facility Changes that Violate a Permit Condition. (effective 1/18/1997)
- 18 AAC 50.365. Facility Changes that do not Violate a Permit Condition. (effective 6/14/1998)
- 18 AAC 50.370. Administrative Revisions. (effective 6/14/1998)
- 18 AAC 50.375. Minor and Significant Permit Revisions. (effective 6/21/1998)
- 18 AAC 50.380. General Operating Permits. (effective 6/14/1998)
- 18 AAC 50.385. Permit-by-rule for Certain Small Storage Tanks. (effective 6/21/1998)
- Article 4. User Fees
  - 18 AAC 50.400. Permit Administration Fees. (effective 6/21/1998)
  - 18 AAC 50.410. Emission Fees. (effective 1/18/1997)
  - 18 AAC 50.420. Billing Procedures. (effective 1/18/1997)
- Article 9. General Provisions
  - 18 AAC 50.910. Establishing Level of Actual Emissions. (effective 1/18/1997)
  - 18 AAC 50.990. Definitions. (effective 1/01/2000)

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[FR Doc. 01-691 Filed 2-28-01; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION  
AGENCY****40 CFR Part 55**

[Alaska 001; FRL-6919-4]

**Outer Continental Shelf Air  
Regulations Consistency Update for  
Alaska****AGENCY:** Environmental Protection  
Agency (EPA).**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the State of Alaska is

the designated COA. The intended effect of approving the OCS requirements is to regulate emissions from OCS sources in accordance with the requirements onshore.

EPA is incorporating *State of Alaska Requirements Applicable to OCS Sources*, July 2, 2000, into the OCS air regulations as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received in writing by April 2, 2001.

**ADDRESSES:** Written comments should be addressed to: Dan Meyer, EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, WA 98101. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations: Office of Air Quality, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, WA 98101; Environmental Protection Agency (LE-6102), 401 "M" Street, SW., Room M-1500, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Dan Meyer, EPA, Office of Air Quality (OAQ-107), 1200 Sixth Avenue, Seattle, WA 98101, (206) 553-4150.

**SUPPLEMENTARY INFORMATION:** For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: December 8, 2000.

**Charles E. Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 01-692 Filed 2-28-01; 8:45 am]

**BILLING CODE 6560-50-P**



# Federal Register

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**Thursday,  
March 1, 2001**

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**Part IV**

## **The President**

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**Proclamation 7408—American Red Cross  
Month, 2001**

**Proclamation 7409—Irish-American  
Heritage Month, 2001**



# Presidential Documents

Title 3—

Proclamation 7408 of February 26, 2001

The President

American Red Cross Month, 2001

By the President of the United States of America

## A Proclamation

The American Red Cross was founded in 1881 by Clara Barton, a woman selflessly devoted to the needs of humanity. Many of the Red Cross's guiding principles—compassion, courage, character, and civic duty—are timeless ideals shared by the people of the United States.

Chartered and authorized by the Congress to act in times of need, the American Red Cross serves our Nation and the world, providing compassionate assistance to people afflicted by personal, local, national, or international disasters. Every day, millions of Red Cross volunteers and employees follow in Clara Barton's footsteps by providing essential services to people in their communities.

For more than 120 years, Americans have relied on the expertise of the American Red Cross in disaster relief. Last year, the Red Cross helped people during devastating wildfires in New Mexico and Montana and in communities hit by massive ice storms in Nebraska, Arkansas, and across the Midwest. Volunteers respond to an estimated 63,000 disasters each year and help millions of people during trying times of loss. The American Red Cross also saves lives long before tragedy strikes by helping individuals and entire communities learn to prepare for disasters.

The educational information distributed by the American Red Cross helps people feel safe at home, at work, at school, and at play. Last year, the Red Cross trained nearly 12 million people in lifesaving CPR and first aid, in the use of automated external defibrillators (AEDS), on HIV/AIDS education, and in lifeguarding and water safety. Many people also know about the Red Cross because of the organization's blood collection drives. In 2000, more than 6.3 million units of blood were collected from 4 million generous blood donors.

Under its charter, the American Red Cross is entrusted to deliver emergency messages and provide vital services for military members and their families. Staff members deploy with our Armed Forces to provide emergency communications and a caring presence to service men and women separated from their families. Almost 40,000 Red Cross volunteers work at more than 100 military sites here and around the world.

Through the years, the American Red Cross has reached out to people worldwide, preventing and relieving the most desperate cases of human suffering caused by crises abroad. For families in need right now—in more than 50 developing nations—the American Red Cross is helping to establish sanitary and healthy living conditions by creating reliable sources of food and water. The organization's international services save the lives of people threatened by calamities such as epidemics, natural disasters, armed conflict, deadly weather, social strife, or economic collapse.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America and Honorary Chairman of the American Red Cross, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2001 as American Red Cross Month. I request, as my predecessor Franklin Roosevelt did 58 years ago, that

each American enlist in the Red Cross “army of mercy”—and give part of themselves to advance this organization’s noble humanitarian mission. We have a long way yet to travel, but together, we can save lives. On behalf of a grateful Nation, we applaud and salute the selfless dedication of generations of Red Crossers.

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

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, sweeping initial "G" and a long, horizontal tail stroke.

[FR Doc. 01-5189

Filed 2-28-01; 8:45 am]

Billing code 3195-01-P

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## Presidential Documents

**Proclamation 7409 of February 26, 2001**

**Irish-American Heritage Month, 2001**

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

### **A Proclamation**

Beginning from the earliest years of settlement, millions of Ireland's people have emigrated to America's shores. This immigration reached a particular peak during the terrible years of the Great Famine more than 150 years ago. Irish immigrants, from professionals to laborers, made an enormous contribution to the building of our Nation.

The Irish who came to America endured many hardships but have prevailed to play vital roles in every chapter of our country's history. Nine of the signers of the Declaration of Independence were of Irish origin, and 19 Presidents of the United States have proudly claimed Irish heritage—including George Washington, Andrew Jackson, John F. Kennedy, and Ronald Reagan. Irish Americans have served with distinction in every war this Nation has fought, from Revolutionaries John Barry and Stephen Moylan to General Douglas MacArthur. Other influential and renowned figures of Irish descent include pioneers Buffalo Bill Cody, Daniel Boone, and Davy Crockett; authors Flannery O'Connor, Eugene O'Neill, and John O'Hara; Civil War photographer Matthew Brady; and entertainers Jackie Gleason, Gene Kelly, and John Wayne. These distinguished Americans represent only a small sampling of the men and women whose legacy has forever changed our national identity and who trace their ancestry to Ireland's green shores.

Today, the more than 44 million Americans who claim Irish heritage look back with pride on the achievements and contributions of their forebears. Irish Americans have distinguished themselves in every sector of American life. We are all enriched, strengthened, and blessed by their service to our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 2001 as Irish-American Heritage Month. I call upon all the people of the United States to observe this month with appropriate ceremonies and activities.

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

A handwritten signature in black ink, appearing to read "G. W. Bush". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

[FR Doc. 01-5190

Filed 2-28-01; 8:45 am]

Billing code 3195-01-P

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# Reader Aids

## Federal Register

Vol. 66, No. 41

Thursday, March 1, 2001

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### CUSTOMER SERVICE AND INFORMATION

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#### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-523-5227**

**Laws** **523-5227**

#### Presidential Documents

Executive orders and proclamations **523-5227**

**The United States Government Manual** **523-5227**

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Electronic and on-line services (voice) **523-4534**

Privacy Act Compilation **523-3187**

Public Laws Update Service (numbers, dates, etc.) **523-6641**

TTY for the deaf-and-hard-of-hearing **523-5229**

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### FEDERAL REGISTER PAGES AND DATE, MARCH

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12843-12992..... 1

### CFR PARTS AFFECTED DURING MARCH

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**REMINDERS**

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

**RULES GOING INTO EFFECT MARCH 1, 2001****AGRICULTURE DEPARTMENT****Forest Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Fish and wildlife; subsistence taking; published 2-13-01

**COMMERCE DEPARTMENT****Export Administration Bureau**

Export administration regulations: Foreign policy-based export control to Federal Republic of Yugoslavia; revision; published 3-1-01

**ENVIRONMENTAL PROTECTION AGENCY**

Acquisition regulations:

Notice to Proceed (NTP) letter contract; published 3-1-01

Organization, functions, and authority delegations:

New Source Performance Standards (NSPS) implementation and enforcement; Knox County, TN; published 3-1-01

**FEDERAL HOUSING FINANCE BOARD**

Federal home loan bank system:

Capital structure requirements; published 1-30-01

**FEDERAL RESERVE SYSTEM**

Credit by brokers and dealers (Regulation T):

Foreign margin stocks list; published 2-22-01

**INTERIOR DEPARTMENT****Fish and Wildlife Service**

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Fish and wildlife; subsistence taking; published 2-13-01

**PENSION BENEFIT GUARANTY CORPORATION**

Single-employer plans:

Allocation of assets—

Interest assumptions for valuing benefits; published 2-15-01

**TRANSPORTATION DEPARTMENT****Federal Aviation Administration**

Airworthiness directives:

Agusta S.p.A.; published 2-14-01

Bombardier; published 2-14-01

**TREASURY DEPARTMENT****Alcohol, Tobacco and Firearms Bureau**

Alcoholic beverages:

Denatured alcohol and rum formulas; published 3-1-01

**COMMENTS DUE NEXT WEEK****AGRICULTURE DEPARTMENT****Agricultural Marketing Service**

Cherries (tart) grown in—

Michigan et al.; comments due by 3-5-01; published 1-3-01

**CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD**

Attorney misconduct, witness sequestration, and exclusion of counsel; comments due by 3-7-01; published 2-5-01

**COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration**

Endangered and threatened species:

Steelhead; one evolutionarily significant unit in California and Oregon; comments due by 3-5-01; published 2-12-01

Fishery conservation and management:

Northeastern United States fisheries—

Northeast multispecies and Atlantic sea scallop; comments due by 3-5-01; published 2-1-01

Marine mammals:

Commercial fishing authorizations— Fisheries categorized according to frequency of incidental takes; 2001 list; comments due by 3-8-01; published 1-22-01

**DEFENSE DEPARTMENT**

Privacy Act; implementation

National Reconnaissance Office; comments due by 3-9-01; published 1-8-01

**DEFENSE DEPARTMENT****Engineers Corps**

Navigation regulations:

St. Marys Falls Canal and Soo Locks, MI; administration and navigation; comments due by 3-9-01; published 1-23-01

**ENERGY DEPARTMENT**

Acquisition regulations:

Conditional payment of fee, profit, and other incentives; comments due by 3-5-01; published 2-1-01

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation

plans; approval and promulgation; various States:

Delaware; comments due by 3-9-01; published 2-7-01

Illinois; comments due by 3-9-01; published 2-7-01

Michigan; comments due by 3-9-01; published 2-7-01

New Hampshire; comments due by 3-9-01; published 2-7-01

Texas; comments due by 3-9-01; published 2-7-01

Hazardous waste:

Project XL program; site-specific projects— Autoliv ASP Inc. facility, Promontory, UT; comments due by 3-6-01; published 2-13-01

Water pollution control:

National Pollution Discharge Elimination System—

South Dakota; sludge management (biosolids) program modification application; comments due by 3-5-01; published 1-18-01

**FEDERAL COMMUNICATIONS COMMISSION**

Common carrier services:

Agency competitive bidding authority; comments due by 3-5-01; published 1-2-01

Interconnection—

Unbundled network elements use to provide exchange access service; comments due by 3-5-01; published 2-1-01

Satellite communications—

Direct broadcast satellite service; non-conforming use of spectrum; comments due by 3-5-01; published 2-2-01

Radio stations; table of assignments:

California; comments due by 3-5-01; published 1-24-01

Georgia; comments due by 3-5-01; published 1-24-01

Ohio and Pennsylvania; comments due by 3-5-01; published 1-26-01

**FEDERAL RESERVE SYSTEM**

Home mortgage disclosure (Regulation C):

Miscellaneous amendments; staff interpretation; comments due by 3-9-01; published 12-15-00

Truth in lending (Regulation Z):

Home-equity lending market abusive lending practices; additional disclosure requirements and substantive limitations for certain loans; comments due by 3-9-01; published 12-26-00

**HEALTH AND HUMAN SERVICES DEPARTMENT****Health Care Financing Administration**

Medicare and Medicaid:

Physicians' referrals to health care entities with which they have financial relationships; comments due by 3-5-01; published 1-4-01

**HOUSING AND URBAN DEVELOPMENT DEPARTMENT**

Public and Indian housing:

Public housing total development cost; comments due by 3-5-01; published 1-4-01

**INTERIOR DEPARTMENT****Minerals Management Service**

Outer Continental Shelf; oil, gas, and sulphur operations:

Surety bonds for leases; requirements; comments due by 3-9-01; published 1-8-01

**INTERIOR DEPARTMENT****National Park Service**

Special regulations:

Rocky Mountain National Park; snowmobile routes elimination; comments due by 3-6-01; published 1-5-01

**INTERIOR DEPARTMENT****Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Utah; comments due by 3-7-01; published 2-20-01

**JUSTICE DEPARTMENT  
Immigration and  
Naturalization Service**

Immigration:

Aliens—

Transit Without Visa Program; countries whose citizens or nationals are ineligible to participate; list; comments due by 3-6-01; published 1-5-01

Transit Without Visa Program; countries whose citizens or nationals are ineligible to participate; determination criteria; comments due by 3-6-01; published 1-5-01

**RAILROAD RETIREMENT  
BOARD**

Organization, functions, and authority delegations:

Use of agency's seal; comments due by 3-5-01; published 1-3-01

**SMALL BUSINESS  
ADMINISTRATION**

Small business size standards:

Nonmanufacturer rule; waivers—

Aerospace ball and roller bearings; comments due by 3-5-01; published 2-20-01

**SOCIAL SECURITY  
ADMINISTRATION**

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance, and aged, blind, and disabled—

Administrative law judges; scheduling video teleconference hearings; comments due by 3-6-01; published 1-5-01

**STATE DEPARTMENT**

Visas; nonimmigrant documentation:

Aliens ineligible to transit without visas; new list of countries; comments due by 3-6-01; published 1-5-01

**TRANSPORTATION  
DEPARTMENT**

**Coast Guard**

Drawbridge operations:

Connecticut; comments due by 3-9-01; published 1-8-01

Electrical engineering:

Marine shipboard electrical cable standards; incorporation by reference; comments due by 3-9-01; published 1-8-01

Uninspected vessels:

Towing vessels; fire suppression systems and voyage planning; comments due by 3-8-01; published 11-8-00

**TRANSPORTATION  
DEPARTMENT**

Americans with Disabilities

Act; implementation:

Accessibility guidelines—  
Over-the-road buses; comments due by 3-8-01; published 2-6-01

**TRANSPORTATION  
DEPARTMENT**

**Federal Aviation  
Administration**

Airworthiness directives:

Boeing; comments due by 3-9-01; published 1-23-01

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 3-5-01; published 2-2-01

Israel Aircraft Industries, Ltd.; comments due by 3-5-01; published 2-2-01

McDonnell Douglas; comments due by 3-5-01; published 1-2-01

Class E airspace; comments due by 3-5-01; published 2-2-01

**TRANSPORTATION  
DEPARTMENT**

**Federal Railroad  
Administration**

Railroad locomotive safety standards; locomotive cab sanitation standards; comments due by 3-5-01; published 1-2-01

**TRANSPORTATION  
DEPARTMENT**

**National Highway Traffic  
Safety Administration**

Motor vehicle safety standards:

Head restraints for passenger cars and light multipurpose vehicles, trucks, and buses; comments due by 3-5-01; published 1-4-01

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Employment taxes and collection of income taxes at source:

Federal employment tax deposits; de minimis rule; comments due by 3-6-01; published 12-6-00

Income taxes:

Defined benefit pension plan; excess assets transfer to retiree health account; minimum cost requirement; hearing; comments due by 3-6-01; published 1-5-01

Space and ocean activities and communication; sources of income; hearing; comments due by 3-7-01; published 1-17-01

**LIST OF PUBLIC LAWS**

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS"

(Public Laws Update Service) on 202-523-6641. This list is also available online at <http://www.nara.gov/fedreg>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.access.gpo.gov/nara/index.html>. Some laws may not yet be available.

**H.J. Res. 7/P.L. 107-1**

Recognizing the 90th birthday of Ronald Reagan. (Feb. 15, 2001; 115 Stat. 3)

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**TABLE OF EFFECTIVE DATES AND TIME PERIODS—MARCH 2001**


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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
March 1	March 16	April 2	April 16	April 30	May 30
March 2	March 19	April 2	April 16	May 1	May 31
March 5	March 20	April 4	April 19	May 4	June 4
March 6	March 21	April 5	April 20	May 7	June 4
March 7	March 22	April 6	April 23	May 7	June 5
March 8	March 23	April 9	April 23	May 7	June 6
March 9	March 26	April 9	April 23	May 8	June 7
March 12	March 27	April 11	April 26	May 11	June 11
March 13	March 28	April 12	April 27	May 14	June 11
March 14	March 29	April 13	April 30	May 14	June 12
March 15	March 30	April 16	April 30	May 14	June 13
March 16	April 2	April 16	April 30	May 15	June 14
March 19	April 3	April 18	May 3	May 18	June 18
March 20	April 4	April 19	May 4	May 21	June 18
March 21	April 5	April 20	May 7	May 21	June 19
March 22	April 6	April 23	May 7	May 21	June 20
March 23	April 9	April 23	May 7	May 22	June 21
March 26	April 10	April 25	May 10	May 25	June 25
March 27	April 11	April 26	May 11	May 29	June 25
March 28	April 12	April 27	May 14	May 29	June 26
March 29	April 13	April 30	May 14	May 29	June 27
March 30	April 16	April 30	May 14	May 29	June 28

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