



# Federal Register

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**Title 3—****Memorandum of May 30, 2001****The President****Delegation of Responsibilities Related to the Latin American Development Act of 1960****Memorandum for the Secretary of State**

By the authority vested in me by the Constitution and laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions conferred upon the President by the Latin American Development Act of 1960, 22 U.S.C. 1942 *et seq.*

The functions delegated by this memorandum may be redelegated as appropriate.

You are authorized and directed to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, May 30, 2001.*

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## Presidential Documents

Presidential Determination No. 2001-16 of June 1, 2001

### Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority for the People's Republic of China

#### Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93-618, 88 Stat. 1978 (hereinafter the "Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to the People's Republic of China will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, June 1, 2001.*

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## Presidential Documents

Presidential Determination No. 2001-17 of June 1, 2001

### **Determination Under Subsection 402(d)(1) of the Trade Act of 1974, as Amended—Continuation of Waiver Authority for Vietnam**

#### **Memorandum for the Secretary of State**

Pursuant to the authority vested in me under the Trade Act of 1974, as amended, Public Law 93-618, 88 Stat. 1978 (hereinafter the "Act"), I determine, pursuant to section 402(d)(1) of the Act, 19 U.S.C. 2432(d)(1), that the further extension of the waiver authority granted by section 402 of the Act will substantially promote the objectives of section 402 of the Act. I further determine that continuation of the waiver applicable to Vietnam will substantially promote the objectives of section 402 of the Act.

You are authorized and directed to publish this determination in the **Federal Register**.



THE WHITE HOUSE,  
*Washington, June 1, 2001.*

# Rules and Regulations

Federal Register

Vol. 66, No. 110

Thursday, June 7, 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.

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

## MERIT SYSTEMS PROTECTION BOARD

### 5 CFR Part 1201

#### Practices and Procedures

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Final rule.

**SUMMARY:** The Merit Systems Protection Board (MSPB or the Board) is amending its rules of practice and procedure in this part to change two citations to Office of Personnel Management regulations and to replace the MSPB Appeal Form contained in Appendix I with the latest version of this form. The Board also provides notice to Federal agencies that bulk supplies of the MSPB Appeal Form may be ordered directly from the Board.

**EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Taylor, Clerk of the Board, (202) 653-7200.

**SUPPLEMENTARY INFORMATION:** The Board is amending its rules of practice and procedure at 5 CFR 1201.3(a)(6) and 5 CFR 1201.3(a)(7) to change citations to regulations of the Office of Personnel Management (OPM). The Board is also amending Appendix I to 5 CFR part 1201 to replace the MSPB Appeal Form with the latest version of this form and is providing notice to Federal agencies that bulk supplies of the MSPB Appeal Form may be ordered directly from the Board.

On March 19, 2001, OPM published an interim rule to implement the Federal Erroneous Retirement Coverage Corrections Act (FERCCA), enacted as Title II of Public Law 106-265 on September 19, 2000 (66 FR 15605). The rule consists of revisions to regulations contained in 5 CFR parts 831, 841 and

846, and the addition of a new part 839, "Correction of Retirement Coverage Errors under the Federal Erroneous Retirement Coverage Corrections Act." Subpart M—Appeal Rights—of the new 5 CFR part 839 includes provisions on appeals to the Board. The Board's regulation at 5 CFR 1201.3(a)(6) provides notice that determinations affecting the rights or interests of an individual or of the United States under the Civil Service Retirement System or the Federal Employees Retirement System may be appealed to the Board. The regulation includes citations to both the statutory provisions that make such determinations appealable and to the applicable OPM regulations. In order to conform its regulations to the revised OPM regulations, therefore, the Board is amending its regulation at 5 CFR 1201.3(a)(6) to include the appropriate citations to FERCCA and the new 5 CFR part 839. The Board is also adding a citation to 5 CFR part 846, "Federal Employees Retirement System—Elections of Coverage." This part, which governs earlier elections to transfer to FERS, also includes provisions on appeals to the Board.

On December 28, 2000, OPM published revisions to its regulations at 5 CFR part 731, "Suitability," with an effective date of January 29, 2001 (65 FR 82239). Subsequently, OPM deferred the effective date of these regulations until March 30, 2001 (66 FR 7863, January 26, 2001). The revised OPM regulations at § 731.501 provide notice of the right to appeal a suitability determination to the Board. Prior to this revision, there were two separate provisions providing notice of an appeal right to MSPB—§ 731.103(d) for suitability determinations made by an agency under authority delegated by OPM and § 731.501 for suitability determinations made by OPM—and the Board included a citation to both of these provisions in its regulation at 5 CFR 1201.3(a)(7). In order to conform its regulations to the revised OPM regulations, therefore, the Board is amending its regulation at 5 CFR 1201.3(a)(7) to update the citation.

Prior to reprinting the MSPB Appeal Form, which is published as Appendix I to 5 CFR part 1201, the Board updated the "Instructions" to reflect several changes in law and the Board's

regulations since the form was last reprinted in 1994. The current version of the form is Optional Form 283 (Rev. 11/00). Accordingly, the Board is amending 5 CFR part 1201 at Appendix I to replace the 10/94 edition of the form with the current version.

The Board is also taking this opportunity to provide notice to Federal agencies that bulk orders for the MSPB Appeal Form may be directed to MSPB by e-mail to [APPEALFORM@mspb.gov](mailto:APPEALFORM@mspb.gov), by facsimile to 202-653-7821, or by telephone to Richard Dorr, 202-653-6772, extension 1113. The Appeal Form is also available for downloading and printing from the MSPB website, [www.mspb.gov](http://www.mspb.gov). The form is a portable document format (PDF) file, and the Adobe Acrobat Reader is required.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

#### List of Subjects in 5 CFR Part 1201

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Board amends 5 CFR part 1201 as follows:

#### PART 1201—PRACTICES AND PROCEDURES

1. The authority citation for part 1201 continues to read as follows:

**Authority:** 5 U.S.C. 1204 and 7701, unless otherwise noted.

##### § 1201.3 [Amended]

2. Amend 5 CFR 1201.3 at paragraph (a)(6) by removing the citation "(5 CFR parts 831, 842, and 844; 5 U.S.C. 8347(d)(1)–(2) and 8461(e)(1))" and by adding in its place "(5 CFR parts 831, 839, 842, 844, and 846; 5 U.S.C. 8347(d)(1)–(2) and 8461(e)(1); and 5 U.S.C. 8331 note, Federal Erroneous Retirement Coverage Corrections Act)".

3. Amend 5 CFR 1201.3 at paragraph (a)(7) by removing the citation "(5 CFR 731.103(d) and 731.501)" and by adding in its place "(5 CFR 731.501)".

4. Revise Appendix I to part 1201 to read as follows:

#### Appendix I to Part 1201—Merit Systems Protection Board Appeal Form

BILLING CODE 7400-01-U

**MERIT SYSTEMS PROTECTION BOARD**



**APPEAL FORM**

**INSTRUCTIONS**

**GENERAL:** You do not have to use this form to file an appeal with the Board. However, if you do not, your appeal must still comply with the Board's regulations. See 5 C.F.R. Parts 1201, 1208, and 1209. Your agency's personnel office will give you access to the regulations, and the Board will expect you to be familiar with them. You also should become familiar with the Board's key case law and controlling court decisions as they may affect your case. Complete **Parts I, II, III and V** of this form **regardless of the kind of action** you are appealing. Complete **Part VI** only if you are appealing an action resulting from a **reduction in force**. You must tell the Board if you are raising an **affirmative defense** (see **Part IV**), and you are **responsible for proving each defense you raise**. If you believe the action you are appealing was threatened, proposed, taken, or not taken because of **whistleblowing activities**, you must complete **Part VII**. If you are requesting a stay, you must complete **Part VIII**. If you claim a violation of your rights under the **Uniformed Services Employment and Reemployment Rights Act (USERRA)** or the **Veterans Employment Opportunities Act (VEOA)**, you must provide the information required by the Board's regulations at 5 C.F.R. 1208.13 (for **USERRA appeals**) or 5 C.F.R. 1208.23 (for **VEOA appeals**). You may use a separate sheet of paper (please put your name and address at the top of each additional page) or you may include the information in block 31 of Part IV.

**after the effective date, or within 30 days after the date you receive the agency's decision, whichever is later.** However, if you and the agency mutually agree in writing to try to resolve your dispute through an **alternative dispute resolution process** before you file an appeal, you have an additional 30 days—for a total of **60 days**—to file your appeal. You may not file your appeal before the effective date of the action you are appealing. If your appeal is late, it may be dismissed as untimely. If you are filing a **USERRA appeal**, there is **no time limit** for filing (see 5 CFR 1208.12). You may not file a **VEOA appeal** with the Board unless you first filed a complaint with the Secretary of Labor and allowed the Secretary at least 60 days to try to resolve the matter; any subsequent appeal to the Board must be filed within **15 days** of the date you receive notice that the Secretary has been unable to resolve the matter (see 5 C.F.R. 1208.22). If you are filing a **whistleblower appeal** after first filing a complaint with the Office of Special Counsel (OSC), your appeal must be filed within **65 days** of the date of the OSC notice advising you that the Special Counsel will not seek corrective action or within **60 days** after the date you receive the OSC notice, whichever is later (see 5 C.F.R. 1209.5). The date of filing is the date your appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, or the date of receipt if you personally deliver it to the regional or field office.

**WHERE TO FILE AN APPEAL:** You must file your appeal with the Board's regional or field office which has responsibility for the geographic area where your duty station was located when the agency took the action or, if you are appealing a retirement or suitability decision, the geographic area where you live. See 5 C.F.R. Part 1201, Appendix II, and 5 C.F.R. 1201.4(d).

**HOW TO FILE AN APPEAL:** You may file your appeal by mail, by facsimile, by commercial overnight delivery, or by personal delivery. You must submit **two copies** of both your appeal and all attachments. You may supplement your response to any question on separate sheets of paper, but if you do, please put your name and address at the top of each additional page. All of your submissions must be legible and on 8 1/2" x 11" paper. **Your appeal must contain your or your representative's signature in block 6.** If it does not, your appeal will be rejected and returned to you. If your representative signs block 6, you must sign block 11 or submit a separate written designation of representative.

**WHEN TO FILE AN APPEAL:** Unless your appeal is covered by a law that sets a different filing time limit, your appeal must be filed during the period **beginning with the day after the effective date**, if any, of the action you are appealing and ending on the **30th day**

**Part I Appellant Identification**

1. Name ( <i>last, first, middle initial</i> )	2. Social Security Number
3. Present address ( <i>number and street, city, state, and ZIP code</i> ) You must notify the Board of any change of address or telephone number while the appeal is pending with MSPB.	4. Home phone ( <i>include area code</i> )
	5. Office phone ( <i>include area code</i> )
6. I certify that all of the statements made in this appeal are true, complete, and correct to the best of my knowledge and belief.	<div style="display: flex; justify-content: space-between;"> <span>Signature of appellant or designated representative</span> <span>Date signed</span> </div> 

**Part II Designation of Representative**

7. You may represent yourself in this appeal, or you may choose someone to represent you. Your representative does not have to be an attorney. You may change your designation of a representative at a later date, if you so desire, but **you must notify the Board promptly of any change**. Where circumstances require, a separate designation of representative may be submitted after the original filing. Include the information requested in blocks 7 through 11.

"I hereby designate \_\_\_\_\_ to serve as my representative during the course of this appeal. I understand that my representative is authorized to act on my behalf. In addition, I specifically delegate to my representative the authority to settle this appeal on my behalf. I understand that any limitation on this settlement authority must be filed in writing with the Board."

8. Representative's address (*number and street, city, state, and ZIP code*).

9. Representative's employer

10. a) Representative's telephone number (*include area code*)

10. b) Representative's facsimile number

11. Appellant's signature

Date

**Part III Appealed Action**

12. Briefly describe the **agency action** you wish to appeal and attach the proposal letter and decision letter. If you are appealing a decision relating to the denial of retirement benefits, attach a copy of OPM's **reconsideration decision**. If the relevant SF-50 or its equivalent is available, send it now; however, do NOT delay filing your appeal because of it. You may submit the SF-50 when it becomes available. Later in the proceeding, you will be afforded an opportunity to submit detailed evidence in support of your appeal.

13. Name and address of the agency that took the action you are appealing (*including bureau or other divisions, as well as street address, city, state and ZIP code*)

14. Your position title and duty station at the time of the action appealed

15. Grade at time of the action appealed

16. Salary at the time of the action appealed

\$ \_\_\_\_\_ per

17. Are you a veteran and/or entitled to the employment rights of a veteran?

Yes  No

18. Employment status at the time of the action appealed

Temporary  Applicant  Retired

Permanent  Term  Seasonal

19. If retired, date of retirement

(*month, day, year*)

20. Type of service

Competitive  SES

Excepted  Postal Service

Foreign Service

21. Length of government service

22. Length of service with acting agency

23. Were you serving a probationary or trial period at the time of the action appealed?

Yes  No

24. Date you received written notice of the proposed action (*month, day, year*) (*attach a copy*)

25. Date you received the final decision notice (*month, day, year*) (*attach a copy*)

26. Effective date of the action appealed (*month, day, year*)

27. Explain briefly why you think the agency was wrong in taking this action.	
28. Do you believe the penalty imposed by the agency was too harsh?  <input type="checkbox"/> Yes <input type="checkbox"/> No	29. What action would you like the Board to take on this case (i.e., what remedy are you asking for)?
<b>Part IV Appellant's Defenses</b>	
30.a) Do you believe the agency committed harmful procedural error(s)?  <input type="checkbox"/> Yes <input type="checkbox"/> No	30.b) If so, what is (are) the error(s)?
30.c) Explain how you were harmed by the error(s).	
<b>Block 31 - Violations of Law: If you use this block to claim a violation of your rights under USERRA or VEOA, you must include the information required by the Board's regulations at 5 C.F.R. 1208.13 (for USERRA appeals) or 5 C.F.R. 1208.23 (for VEOA appeals). DO NOT use this block to claim a violation of the Whistleblower Protection Act; instead, complete Part VII and, if you are also requesting a stay, Part VIII.</b>	
31.a) Do you believe that the action you are appealing violated the law?  <input type="checkbox"/> Yes <input type="checkbox"/> No	31.b) If so, what law?
31.c) How was it violated?	
32.a) If you believe you were discriminated against by the agency, <b>in connection with the matter appealed</b> , because of your race, color, religion, sex, national origin, marital status, political affiliation, disability, or age, indicate so and explain why you believe it to be true.	
32.b) Have you filed a <b>formal</b> discrimination complaint with your agency or any other agency concerning the matter which you are seeking to appeal? <span style="float: right;"> <input type="checkbox"/> Yes (attach a copy)    <input type="checkbox"/> No                 </span>	
32.c) If yes, place filed (agency, number and street, city, state, and ZIP code)	32.d) Date filed (month, day, year)
32.e) Has a decision been issued?  <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No	

<p>33.a) Have you, or anyone in your behalf, filed a formal grievance with your agency concerning this matter, under a negotiated grievance procedure provided by a collective bargaining agreement?</p> <p><input type="checkbox"/> Yes (attach a copy)    <input type="checkbox"/> No</p>	<p>33.b) Date filed (month, day, year)</p>
<p>33.c) If yes, place filed (agency, number and street, city, state, and ZIP code)</p>	<p>33.d) Has a decision been issued?</p> <p><input type="checkbox"/> Yes (attach a copy)    <input type="checkbox"/> No</p> <p>33.e) If yes, date issued (month, day, year)</p>

**Part V Hearing**

34. You may have a right to a hearing on this appeal. If you do not want a hearing, the Board will make its decision on the basis of the documents you and the agency submit, after providing you and the agency with an opportunity to submit additional documents.

Do you want a hearing?     Yes                       No

If you choose to have a hearing, the Board will notify you where and when it is to be held.

**Part VI Reduction In Force**

**INSTRUCTIONS**

Fill out this part only if you are appealing from a Reduction in Force. Your agency's personnel office can furnish you with most of the information requested below.

<p>35. Retention group and sub-group</p>	<p>36. Service computation date</p>	<p>37.a) Has your agency offered you another position rather than separating you?</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>
<p>37.b) Title of position offered</p>	<p>37.c) Grade of position offered</p>	<p>37.d) Salary of position offered</p> <p>\$                      per</p>
<p>37.e) Location of position offered</p>		<p>37.f) Did you accept this position?</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>

38. Explain why you think you should not have been affected by the Reduction In Force. (Explanations could include: you were placed in the wrong retention group or sub-group; an error was made in the computation of your service computation date; competitive area was too narrow; improperly reached for separation from competitive level; an exception was made to the regular order of selection; the required number of days notice was not given; you believe you have assignment [bump or retreat] rights; or any other reasons. Please provide as much information as possible regarding each reason.)

**Part VII Whistleblowing Activity****INSTRUCTIONS**

Complete Parts VII and VIII of this form only if you believe the action you are appealing is based on whistleblowing activities. If you filed a complaint with the Office of Special Counsel (OSC) using Form OSC-11 (8/00) before filing this appeal, you may attach a copy of Part 2, Reprisal for Whistleblowing, of the OSC form together with any continuation sheet or supplement filed with OSC. This will give the Board the information requested in blocks 39(a) through (c) below. Please complete the other blocks in this part even if you attach Form OSC-11.

<p>39.a) Have you disclosed information that evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety?</p> <p><input type="checkbox"/> Yes (attach a copy or summary of disclosure) <input type="checkbox"/> No</p>	<p>39.b) If yes, provide the name, title, and office address of the person to whom the disclosure was made</p>
<p>39.c) Date the disclosure was made (month, day, year)</p>	
<p>40. If you believe the action you are appealing was... (please check appropriate box)</p> <p><input type="checkbox"/> Threatened      <input type="checkbox"/> Proposed      <input type="checkbox"/> Taken      <input type="checkbox"/> Not Taken</p> <p>...because of a disclosure evidencing a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, provide:</p> <p>a) a chronology of facts concerning the action appealed; and</p> <p>b) explain why you believe the action was based on whistleblowing activity and attach a copy of any documentary evidence</p>	
<p>41. a) Have you sought corrective action from the Office of Special Counsel concerning the action which you are appealing?</p> <p><input type="checkbox"/> Yes (attach a copy of your request to the Office of Special Counsel for corrective action) <input type="checkbox"/> No</p>	<p>41.b) If yes, date(s) filed (month, day, year)</p>
<p>41. c) Place filed (location, number and street, city, state, and ZIP code)</p>	

42. Have you received a written notice of your right to file this appeal from the Office of Special Counsel? <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No	
43. a) Have you already requested a stay from the Board of the action you are seeking to appeal? <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No	43. b) If yes, date requested (month, day, year)
43. c) Place filed (location, number and street, city, state, and ZIP code)	43. d) Has there been a decision? <input type="checkbox"/> Yes (attach a copy) <input type="checkbox"/> No

**Part VIII Stay Request**

**INSTRUCTIONS**

You may request a stay of a personnel action allegedly based on whistleblowing at any time after you become eligible to file an appeal with the Board under 5 C.F.R. 1209.5, but no later than the time limit set for the close of discovery in the appeal. The stay request may be filed prior to, simultaneous with, or after the filing of an appeal. When you file a stay request with the Board, you must

simultaneously serve it upon the agency's local servicing personnel office or the agency's designated representative. 5 C.F.R. 1209.8.

If your stay request is being filed prior to filing an appeal with the Board, you must complete Parts I and II and items 41 through 43 above.

44. On separate sheets of paper, please provide the following. Please put your name and address at the top of each page.

<p>a. A chronology of facts, including a description of the disclosure and the action taken by the agency (unless you have already supplied this information in Part VII above).</p> <p>b. Evidence and/or argument demonstrating that the:</p> <p>(1) action threatened, proposed, taken, or not taken is a personnel action, as defined in 5 C.F.R. 1209.4(a); and</p> <p>(2) action complained of was based on whistleblowing, as defined in 5 C.F.R. 1209.4(b) (unless you have already supplied this information in Part VII above).</p>	<p>c. Evidence and/or argument demonstrating that there is a substantial likelihood that you will prevail on the merits of your appeal of the personnel action.</p> <p>d. Documentary evidence that supports your stay request.</p> <p>e. Evidence and/or argument addressing how long the stay should remain in effect.</p> <p>f. Certificate of service specifying how and when the stay request was served on the agency.</p> <p>g. You may provide evidence and/or argument concerning whether a stay would impose extreme hardship on the agency.</p>
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**Privacy Act Statement:** This form requests personal information which is relevant and necessary to reach a decision in your appeal. The Merit Systems Protection Board collects this information in order to process appeals under its statutory and regulatory authority. Since your appeal is a voluntary action you are not required to provide any personal information in connection with it. However, failure to supply the Merit Systems Protection Board with all the information essential to reach a decision in your case could result in the rejection of your appeal.

The Merit Systems Protection Board is authorized under provisions of Executive Order 9397, dated November 22, 1943, to request your Social Security number, but providing your Social Security number is voluntary and failure to provide it will not result in the rejection of your appeal. Your Social Security number will only be used for identification purposes in the processing of your appeal.

You should know that the decisions of the Merit Systems Protection

Board on appeals are final administrative decisions and, as such, are available to the public under the provisions of the Freedom of Information Act. Additionally, it is possible that information contained in your appeal file may be released as required by the Freedom of Information Act. Some information about your appeal will also be used in depersonalized form as a data base for program statistics.

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to vary from 20 minutes to 1 hour, with an average of 30 minutes per response, including time for reviewing the form, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

Dated: June 4, 2001.

**Robert E. Taylor,**

*Clerk of the Board.*

[FR Doc. 01-14388 Filed 6-6-01; 8:45 am]

BILLING CODE 7400-01-C

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 993

[Docket No. FV01-993-1 FR]

#### Dried Prunes Produced in California; Undersized Regulation for the 2001-02 Crop Year

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

**ACTION:** Final rule.

**SUMMARY:** This rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2001-02 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allows handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes by approximately 3,400 tons while leaving sufficient prunes to fulfill foreign and domestic trade demand.

**EFFECTIVE DATE:** August 1, 2001 through July 31, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487-5901, Fax: (559) 487-5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202) 720-8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456; telephone: (202) 720-2491, Fax: (202)

720-8938, or E-mail:

Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2001-02 crop year for supply management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from  $2\frac{4}{32}$  to  $2\frac{4}{32}$  of an inch in diameter; and for non-French prunes, the opening will be increased from  $2\frac{8}{32}$  to  $3\frac{0}{32}$  of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 2001, through July 31, 2002, and was unanimously recommended by the Committee at a November 29, 2000, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes. \* \* \* Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit undersized regulations using openings of  $2\frac{3}{32}$  or  $2\frac{4}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  or  $3\frac{0}{32}$  of an inch for non-French prunes.

During the 1974-75 and 1977-78 crop years, the undersized prune regulation was established by the Department at  $2\frac{3}{32}$  of an inch in diameter for French prunes and  $2\frac{8}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974-75 crop year with an undersized regulation at the aforementioned  $2\frac{3}{32}$  and  $2\frac{8}{32}$  inch diameter screen sizes. During the 1975-76 and 1976-77 crop years, the undersized prune regulation was established at  $2\frac{4}{32}$  of an inch for French prunes and  $3\frac{0}{32}$  of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975-76, 1976-77, and 1977-78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable

to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes. During the 1998–99 crop year, an undersized prune regulation was established at  $\frac{2}{32}$  of an inch for French prunes, and  $\frac{3}{32}$  of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at  $\frac{2}{32}$  of an inch in diameter for French prunes and  $\frac{3}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000. With larger than desired carryin inventories and a 2000–01 prune crop of about 211,300 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at  $\frac{2}{32}$  of an inch in diameter for French prunes and  $\frac{3}{32}$  of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The

carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop size of about 172,000 natural condition tons and reduced shipments during the 1999–2000 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2000, the Committee unanimously recommended continuing an undersized prune regulation at  $\frac{2}{32}$  of an inch in diameter for French prunes and  $\frac{3}{32}$  of an inch in diameter for non-French prunes during the 2001–02 crop year for supply management purposes. This regulation will be in effect from August 1, 2001, through July 31, 2002.

The Committee estimated that there will be an excess of about 41,476 natural condition tons of dried prunes as of July 31, 2001. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99, 1999–2000, and 2000–01 crop years. It is estimated that approximately 3,400 natural condition tons of small prunes will be removed from human consumption channels during the 2001–02 crop year as a result of this rule. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2001–02 crop year, and provide an adequate carryout on July 31, 2002, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2001–02 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 299,420 natural condition tons by the year 2005); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); and (4) California's continued excess inventory situation. The production of

these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The changes to the undersized regulation for the 2001–02 crop year are the result of these deliberations, and the Committee's desire to gradually bring supplies in line with market needs.

The industry's oversupply situation is expected to continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 22,000 acres during the 1999–2000 crop year. The 1996–97 through 1999–2000 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10-years, the average was 2.1 tons per acre.

The 2000–01 dried prune crop is expected to be 211,300 natural condition tons. Another large crop as high as 220,000 natural condition tons is expected for the 2001–02 crop year, partly because of an anticipated increase in bearing acreage.

The 1997–98 crop year producer prices for the  $\frac{2}{32}$  size French prunes have been about \$40–\$50 per ton, about \$260–\$270 per ton below post harvest costs. During the 2000–01 crop year, feedlots are paying about \$35 to \$40 per ton for the  $\frac{2}{32}$  size French prunes, which is about \$270–\$275 per ton below post harvest costs. The lower producer prices are expected to continue as an incentive for production of larger size prunes. The larger sizes will help the industry better meet the increasing market demand for larger-sized pitted prunes.

The 1998–99, 1999–2000 and 2000–01 undersized prune rules of  $\frac{2}{32}$  of an inch for French prunes and  $\frac{3}{32}$  of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2000, was 65,131 natural condition tons, and about 3,400 natural condition tons of dried prunes are expected to be removed from the 2000–01 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented

during the 2001–02 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2001–02 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the  $2\frac{3}{32}$  and  $2\frac{8}{32}$  inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e. increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2001–02 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is volume control, not quality control. The smaller diameter openings of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes were implemented to improve product quality. The recommended increases to  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of

business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000.

An updated industry profile shows that 9 out of 22 handlers (41%) shipped over \$5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 22 handlers (59%) shipped under \$5,000,000 worth of prunes and could be considered small handlers. An estimated 109 producers, or less than 9% of the 1,250 total producers, could be considered large growers with annual incomes over \$500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This final rule will establish an undersized prune regulation of  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes for the 2001–02 crop year for inventory management purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2000–01 are expected to remove only 3,449 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 41,400 natural condition tons of dried prunes on July 31, 2001. Implementation of the larger openings in 2001–02 is expected to reduce that surplus by about 3,400 tons.

Because the benefits and costs of the action will be directly proportional to the quantity of  $2\frac{4}{32}$  screen French prunes and  $3\frac{0}{32}$  screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to

season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large; but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for large entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 3,400 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2000, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers of these small sizes is quite bleak with producers losing about \$270–\$275 on every ton delivered to handlers. During the 2000–01 crop year, the feedlot prices for  $2\frac{4}{32}$  screen French prunes range between \$35 and \$40 per ton. This price is a little lower than the \$40–50 price during the 1998–99 crop year. The cost of drying a ton of such prunes is \$260 per ton at a 4 to 1 dry-away ratio, transportation is at least \$20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is \$30 per ton. The total cost is about \$310 per ton which equates to a loss of about \$270–\$275 per ton for every ton of  $2\frac{4}{32}$  screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories should probably result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes

produced in California from human consumption outlets will eliminate an estimated 3,400 tons of small-sized dried prunes during the 2001–02 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 65,131 tons of natural condition prunes on July 31, 2000, the end of the 1999–2000 crop year. The 65,131 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2000–01 inventory surplus of about 24,000 tons. The undersized regulation will help reduce the surplus, but the anticipated large 2001–02 prune crop is expected to worsen the supply imbalance.

One of the primary reasons for this rulemaking action is that the dried prune industry continues to be plagued by high carryin inventories. California prune handlers estimate that 82,286 tons of prunes (natural condition) will be inventoried at the end of the 2000–01 crop year. This will result in a surplus of 41,476 tons over the industry's desired carryout of 40,810 tons.

Increasing the screen openings is an attempt to moderately reduce and control the marketable production and carryin inventory. If the marketable supply and the carryin inventory are both reduced, then prices may be expected to increase. If no action is taken, rising production levels, high inventories, and low grower prices will continue.

To assess the impacts that regulation has on the prices growers receive for their product, an econometric model has been estimated. The two variables of interest in this model are marketable production and carryin inventory. Both of the estimated parameters for these variables are negative and statistically significant. This provides evidence that reducing the marketable supply and the carryin inventory will benefit all growers and handlers regardless of size.

Increasing the undersized openings will result in a reduced level of marketable production. The Committee estimates that marketable production will be reduced by 3,400 tons, or 2.2 percent. If marketable production for the 2001–02 crop year is reduced by 2.2 percent, the model suggests an increase in prices of approximately 0.9 percent compared to taking no action. Although

increasing the undersized openings will only have a modest effect on marketable production, price increases will result. This action will not only help reduce the oversupply situation, but improve the quality of the manufactured prune products by removing the smaller, less desirable prunes from the supply chain.

Without increasing the undersized openings, the industry could be expected to continue to build unwanted inventories. These inventories have a depressing effect on the grower prices. The econometric model shows that, for every 1 percent increase in carryin inventories, a decrease in grower prices of 0.12 percent occurs.

This action will not result in a shortage of prunes for either retail or food service outlets. Inventories are expected to remain above desired levels and marketable production is anticipated to be in excess of demand. Additionally, this action is not expected to have a significant impact on retail or food service outlet prices.

In summary, increasing the openings in the sizing screens may reduce the volume of marketable production and decrease the carryin inventory. If the rule change accomplishes these two intended effects, the model shows that season average prices will be slightly higher than if the screen openings remain unchanged. A higher season-average price should benefit all producers regardless of size.

As the marketable dried prune production and surplus prune inventories are reduced through this rule, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of \$1,140 per ton to a low of \$778 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2000–01 season is expected to be about the same as the 1999–2000 season average producer price of \$892 per ton, or about 42 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to

contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. A third alternative discussed was to advance to a  $2\frac{5}{32}$  screen undersized regulation for French prunes. However, handlers expressed concern that this will reduce the amount of manufacturing prunes available for the manufacture of prune juice and concentrate. This will increase the prices of these products and could encourage increased imports of foreign prune concentrate, which could be converted into prune juice and sold cheaper than California packed juice. This possibility may be explored in more detail at a future meeting when a thorough analysis is made as to what effect this change will have on the prune industry. The first two initiatives were not supported because they will not specifically eliminate the smallest, least valuable prunes, which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of  $2\frac{3}{32}$  of an inch for French prunes and  $2\frac{8}{32}$  of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to  $2\frac{4}{32}$  of an inch in diameter for French prunes and  $3\frac{0}{32}$  of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping

requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, March 6, 2001, (66 FR 13454). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 16, 2001. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

### PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new section 993.408 is added to read as follows:

#### § 993.408 Undersized prune regulation for the 2001–02 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2001–02 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes,  $2\frac{4}{32}$  of an inch in diameter; for non-French prunes,  $3\frac{0}{32}$  of an inch in diameter.

Dated: June 1, 2001.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 01–14291 Filed 6–4–01; 10:42 am]

**BILLING CODE 3410–02–U**

### SMALL BUSINESS ADMINISTRATION

#### 13 CFR Parts 107 and 121

#### Size Eligibility Requirements for SBA Financial Assistance and Size Standards for Agriculture

**AGENCY:** Small Business Administration.  
**ACTION:** Direct final rule.

**SUMMARY:** This final rule implements legislative changes to size eligibility requirements for assistance from Small Business Investment Companies (SBICs) and Certified Development Companies (CDCs), and for the Agriculture industry.

The Small Business Investment Improvement Act of 1999, codified in sections 103(5) and 103(12) of the Small Business Investment Act of 1958, as amended, established a method for determining the eligibility of a business that is not required to pay Federal income tax at the corporate level, but that is required to pass income through to its shareholders or partners. The new method treats “pass-through” enterprises the same as firms that pay Federal taxes for the purpose of size standard determinations.

The Small Business Reauthorization Act of 2000, codified in section 3(a)(1) of the Small Business Act, increases the size standards used for Agriculture from \$500,000 to \$750,000 in average annual receipts.

**DATES:** The rule will become effective August 6, 2001, unless adverse comment is received prior to July 9, 2001. If an adverse comment is received,

SBA will publish a timely withdrawal of the rule in the **Federal Register**. The Agency may proceed to publish a proposed rule following notice and comment procedures.

**ADDRESSES:** Send written comments to Gary M. Jackson, Assistant Administrator for Size Standards, U.S. Small Business Administration, 409 Third St., SW., Mail Code 6530, Washington, DC 20416; or via e-mail to [sizestandards@sba.gov](mailto:sizestandards@sba.gov).

**FOR FURTHER INFORMATION CONTACT:** Diane Heal, Office of Size Standards, (202) 205–6618.

#### SUPPLEMENTARY INFORMATION:

#### SBIC/CDC

A business seeking financial assistance from an SBIC or a CDC must qualify as a “small-business concern” as defined in section 103(5) of the Small Business Investment Act of 1958, as amended (the Act), and as implemented by 13 CFR 121.301(b) for CDCs and 13 CFR 121.301(c) for SBICs. For SBIC financial assistance, a business also may need to qualify as a “smaller enterprise” as defined in section 103(12) of the Act, and as implemented by 13 CFR 107.710(a). Each of these definitions requires a firm to meet either the size standard for its primary industry or certain net worth and net income tests. The net income tests measure the firm's average net income after Federal income taxes for the preceding 2 years.

On April 5, 1999, Public Law 106–9, the “Small Business Investment Improvement Act of 1999” which expands opportunities for small businesses to receive investment capital from banks and traditional investment sources, became effective. This legislation established a new method for applying the net income test to a business that is not required to pay Federal income tax at the enterprise level, but that is required to pass income through to its shareholders, partners, or other owners. This new method permits such businesses to use a specified formula to impute a tax to the business and to compute “after-tax” net income. The intent is to permit “pass-through” enterprises to be treated the same as concerns that pay Federal income taxes for purposes of SBA size standard determinations.

As authorized by Public Law 106–9, this final rule revises 121.301(b), 121.301(c) and 107.710(a) to permit a business concern that does not pay Federal income taxes at the enterprise level to deduct an imputed Federal income tax expense from its net income. The business concern computes this deduction by multiplying its net income

by the marginal Federal income tax rate that would have applied if the concern were a taxable corporation. If the business concern is also treated as a pass-through entity for State and local income tax purposes, it can compute an additional deduction equal to its net income multiplied by the State income tax rate (or combined State and local income tax rate, if applicable) that would have applied if it were a taxable corporation. In this case, the State/local tax deduction must be computed first and then subtracted from net income before computing the deduction for Federal income taxes.

### Agriculture Industry

On December 21, 2000, Public Law 106-554, the "Small Business Reauthorization Act of 2000" became effective. Section 806(b) of this legislation increases the size standard for small businesses in the Agriculture industry from \$500,000 in average annual receipts to \$750,000 in average annual receipts. This change affects Agriculture industries under North American Industry Classification System (NAICS) codes, Sector 11, "Agriculture, Forestry, Fishing and Hunting," Subsector 111 "Crop Production" (NAICS Codes 111110 through 111998) and Subsector 112, "Animal Production" (NAICS Codes 112111 through 112990). Not affected by this legislative change are NAICS codes 112112, "Cattle Feedlots" and 112310, "Chicken Egg Production" as their size standard is currently above \$750,000. Those size standards remain at \$1.5 million and \$9.0 million, respectively.

The SBA is publishing this regulation as a direct final rule because the SBA believes the rule is non-controversial. It is merely implementing provisions of Public Laws 106-9 and 106-554. As such, SBA believes that this rule will elicit no significant adverse comment.

### Compliance With Executive Orders 12866, 12988, and 13132, the Regulatory Flexibility Act (5 U.S.C. 601-612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This final rule is not a "significant" regulatory action for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601-612. This rule is merely implementing provisions of Pub. L. 106-9 and 106-554. This rule does not impose costs upon the businesses that might be affected by it. The rule will have no effect on the amount or dollar value of any contract requirement or on the number of requirements reserved for the small business set-aside program. Therefore, it will not have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

For purposes of Executive Order 13132, SBA has determined that this final rule will have no federalism implications.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA has determined that this final rule contains no new reporting or recordkeeping requirements.

### List of Subjects in 13 CFR Parts 107 and 121

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated forth above, SBA amends 13 CFR parts 107 and 121 as follows:

### PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for 13 CFR Part 107 continues to read as follows:

**Authority:** 15 U.S.C. 662, 681 *et seq.*, 683, 687(c), 687b, 687d, 687g and 687m.

2. In § 107.710, revise paragraph (a) to read as follows:

#### § 107.710 Requirement to finance smaller enterprises.

\* \* \* \* \*

(a) *Definition of Smaller Enterprise.* A Smaller Enterprise means any small business concern that:

(1) Both together with its Affiliates, and by itself, meets the size standard of § 121.201 of this chapter at the time of Financing for the industry in which it is then primarily engaged; or

(2) Together with its affiliates has a net worth of not more than \$6 million and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two years no greater than \$2 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (a)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (a)(2)(i) and (a)(2)(ii) of this section.

\* \* \* \* \*

### PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for 13 CFR Part 121 continues to read as follows:

**Authority:** 15 U.S.C. 632(a), 634(b)(6), 637(a), 644(c), and 662(5).

2. In § 121.201, revise the referenced NAICS Codes and size standards in the table "SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY," under the heading Sector 11—Agriculture, Forestry, and Fishing—Subsector 111—Crop Production, and Subsector 112—Animal Production, to read as follows:

#### § 121.201 What size standards has SBA identified by North American Industry Classification System codes?

\* \* \* \* \*

SMALL BUSINESS SIZE STANDARD BY NAICS INDUSTRY

NAICS code	Description (N.E.C.=not elsewhere classified)	Size standard in number of employees or millions of dollars
<b>Sector 11—Agriculture, Forestry, and Fishing</b>		
<b>Subsector 111—Crop Production</b>		
111110	Soybean Farming	\$0.75
111120	Oilseed (except Soybean) Farming	0.75
111130	Dry Pea and Bean Farming	0.75
111140	Wheat Farming	0.75
111150	Corn Farming	0.75
111160	Rice Farming	0.75
111191	Oilseed and Grain Combination Farming	0.75
111199	All Other Grain Farming	0.75
111211	Potato Farming	0.75
111219	Other Vegetable (except Potato) and Melon Farming	0.75
111310	Orange Groves	0.75
111320	Citrus (except Orange) Groves	0.75
111331	Apple Orchards	0.75
111332	Grape Vineyards	0.75
111333	Strawberry Farming	0.75
111334	Berry (except Strawberry) Farming	0.75
111335	Tree Nut Farming	0.75
111336	Fruit and Tree Nut Combination Farming	0.75
111339	Other Noncitrus Fruit Farming	0.75
111411	Mushroom Production	0.75
111419	Other Food Crops Grown Under Cover	0.75
111421	Nursery and Tree Production	0.75
111422	Floriculture Production	0.75
111910	Tobacco Farming	0.75
111920	Cotton Farming	0.75
111930	Sugarcane Farming	0.75
111940	Hay Farming	0.75
111991	Sugar Beet Farming	0.75
111992	Peanut Farming	0.75
111998	All Other Miscellaneous Crop Farming	0.75
<b>Subsector 112—Animal Production</b>		
112111	Beef Cattle Ranching and Farming	0.75
112112	Cattle Feedlots	1.50
112120	Dairy Cattle and Milk Production	0.75
112210	Hog and Pig Farming	0.75
112310	Chicken Egg Production	9.00
112320	Broilers and Other Meat Type Chicken Production	0.75
112330	Turkey Production	0.75
112340	Poultry Hatcheries	0.75
112390	Other Poultry Production	0.75
112410	Sheep Farming	0.75
112420	Goat Farming	0.75
112511	Finfish Farming and Fish Hatcheries	0.75
112512	Shellfish Farming	0.75
112519	Other Animal Aquaculture	0.75
112910	Apiculture	0.75
112920	Horse and Other Equine Production	0.75
112930	Fur-Bearing Animal and Rabbit Production	0.75
112990	All Other Animal Production	0.75
*	*	*

3. In § 121.301, revise paragraphs (b) and (c) to read as follows:

**§ 121.301 What size standards are applicable to financial assistance programs?**

\* \* \* \* \*

(b) For Development Company programs, an applicant must meet one of the following standards:

- (1) The same standards applicable under paragraph (a) of this section; or
- (2) Including its affiliates, tangible net worth not in excess of \$6 million, and average net income after Federal income

taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$2 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners,

the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (b)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Sum the results obtained in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(c) For the Small Business Investment Company (SBIC) program, an applicant must meet one of the following standards:

(1) The same standards applicable under paragraph (a) of this section; or

(2) Including its affiliates, tangible net worth not in excess of \$18 million, and average net income after Federal income taxes (excluding any carry-over losses) for the preceding two completed fiscal years not in excess of \$6 million. If the applicant is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to its shareholders, partners, beneficiaries, or other equitable owners, the applicant's "net income after Federal income taxes" will be its net income reduced by an amount computed as follows:

(i) If the applicant is not required by law to pay State (and local, if any) income taxes at the enterprise level, multiply its net income by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if it were a taxable corporation.

(ii) Multiply the applicant's net income, less any deduction for State and local income taxes calculated under paragraph (c)(2)(i) of this section, by the marginal Federal income tax rate that would have applied if the applicant were a taxable corporation.

(iii) Add the results obtained in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

\* \* \* \* \*

Dated: May 30, 2001.

**John Whitmore,**

*Acting Administrator.*

[FR Doc. 01-14222 Filed 6-6-01; 8:45 am]

BILLING CODE 8025-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 23

[Docket No. CE167, Special Condition 23-107-SC]

#### Special Conditions; Diamond DA 40; Protection of Systems for High Intensity Radiated Fields (HIRF)

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

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

**SUMMARY:** These special conditions are issued to Diamond Aircraft Industries GmbH, N.A. Otto-Str. 5, A-2700 Wiener Neustadt, Austria, for a Type Certificate for the Model DA 40 airplane. This airplane will have the potential for novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. The current design does not include novel and unusual design features such as the installation of electronic flight instrument system (EFIS) displays; however, Diamond Aircraft Industries GmbH would like to make the applicable tests necessary for these types of installations for which the applicable regulations do not contain adequate or appropriate airworthiness 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 the airworthiness standards applicable to these airplanes.

**DATES:** The effective date of these special conditions is July 9, 2001. Comments must be received on or before July 9, 2001.

**ADDRESSES:** Comments may be mailed in duplicate to: Federal Aviation Administration Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE167, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE167. 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:** Ervin Dvorak, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

#### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice 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. The 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 this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE167." The postcard will be date stamped and returned to the commenter.

#### Background

On May 11, 2000, Diamond Aircraft Industries GmbH, N.A. Otto-Str. 5, A-2700 Wiener Neustadt, Austria, made an application to the FAA for a new Certificate for the Model DA 40 airplane. The current design does not include novel and unusual design features such as the installation of electronic flight instrument system (EFIS) displays; however, Diamond Aircraft Industries GmbH would like to make the applicable tests necessary for these types of installations. The applicable regulations do not contain adequate or appropriate airworthiness 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

the airworthiness standards applicable to these airplanes.

**Type Certification Basis**

Under the provisions of 14 CFR 21.17, Diamond Aircraft Industries GmbH, must show that the Model DA 40 aircraft meets the following provisions, or the applicable regulations in effect on the date of application for the Model DA 40: FAR part 23 effective February 9, 1996, through Amendment 23-51. Noise Certification—FAR 36 up to Amendment 10, as applicable. Fuel Venting Emissions—SFAR 27 up to Amendment 3, as applicable; exemptions, if any; and the special conditions adopted by this rulemaking action.

**Discussion**

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions are normally issued in accordance with § 11.19, as required by § 11.38, and become a part of the type certification basis in accordance with § 21.17(a)(2).

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

**Novel or Unusual Design Features**

Diamond Aircraft Industries GmbH, plans to test the Model DA 40 such that it could incorporate certain novel and unusual design features into the airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF.

**Protection of Systems From High Intensity Radiated Fields (HIRF)**

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic

systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

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

Frequency	Field strength (volts per meter)	
	Peak	Average
400 MHz–700 MHz .....	700	50
700 MHz–1 GHz .....	700	100
1 GHz–2 GHz .....	2000	200
2 GHz–4 GHz .....	3000	200
4 GHz–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 root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term “critical” means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and not-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

**Applicability**

As discussed above, these special conditions are applicable to Diamond Aircraft Industries GmbH, Model DA 40 airplane. Should Diamond Aircraft Industries GmbH, apply at a later date

for an amended type certificate to modify the Model DA 40 that incorporates novel or unusual design feature, the special conditions would apply under the provisions of § 21.101(a)(1).

### Conclusion

This action affects only certain novel or unusual design features on one model of airplane. 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 comment 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 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

### Citation

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.19 and 11.38.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Diamond Model DA 40 airplane.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF)*. Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high

intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *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 Kansas City, Missouri, on May 23, 2001.

**Michael Gallagher,**

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

[FR Doc. 01-14233 Filed 6-6-01; 8:45 am]

**BILLING CODE 4910-13-M**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 902

#### 50 CFR Part 635

[Docket No. 010530142-1142-01; I.D. 040601J]

RIN 0648-AP23

### Atlantic Highly Migratory Species (HMS); NOAA Information Collection Requirements; Regulatory Adjustments

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

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

**SUMMARY:** NMFS announces approval by the Office of Management and Budget (OMB) of a collection-of-information requirement contained in the final consolidated regulations governing the Atlantic HMS fisheries. Accordingly, NMFS amends the regulations and makes effective the requirement that vessels taking paying customers to fish for Atlantic tunas, swordfish, sharks, and billfish obtain an Atlantic HMS Charter/Headboat permit. This final rule, technical amendment, also updates the OMB table to add this OMB approval, to remove expired control numbers, and to correct control numbers to the appropriate CFR part or section. The intent of this final rule is to inform the public of the effective date of the Atlantic HMS Charter/Headboat permit requirement and to adjust the regulations accordingly.

**DATES:** Effective July 1, 2001.

**ADDRESSES:** Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Christopher Rogers, Acting Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Pat Scida, 978-281-9260.

**SUPPLEMENTARY INFORMATION:** On May 28, 1999, NMFS published a final rule (64 FR 29090) to implement the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP) and Amendment One to the Fishery Management Plan for Atlantic Billfish (Billfish FMP Amendment). One of the measures in the FMPs and the implementing rule required vessels that take paying customers fishing for Atlantic tunas, swordfish, sharks, and billfish to obtain an Atlantic HMS Charter/Headboat permit (50 CFR 635.46(b)). The final rule was published prior to OMB's approval of the information collection requirement for the charter/headboat permit. Therefore, the effective date of this information collection requirement was deferred pending OMB approval. On August 9, 2000, OMB approved the information collection associated with the Atlantic HMS Charter/Headboat permit requirement. As the OMB approval was issued during the midst of the 2000 fishing year, NMFS did not immediately make the regulation effective so as to avoid confusion among charter/headboat operators who had already been issued Atlantic Tunas permits for the 2000 fishing year, and to provide the Agency time to modify the automated permit system to issue the new type of permits.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. This final rule/technical amendment notifies the public of the OMB approval of this information collection, codifies OMB control number 0648-0327 for 50 CFR 635.4(b) in the table at 15 CFR 902.1(b), and updates the table at 15 CFR 902.1(b) to remove expired control numbers and to correct control numbers that were not associated with the appropriate CFR part or section.

This final rule/technical amendment makes the regulations requiring the Atlantic HMS Charter/Headboat permit effective July 1, 2001. The fishing year for sharks is based on a calendar year. It also amends the regulations to reflect this new requirement by removing or replacing obsolete regulatory text that pertains to the Atlantic Tunas Charter/Headboat permit category.

**Classification**

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA that has been approved by OMB under 0648-0327. The public reporting burden for the information collection for an initial permit is estimated to average 30 minutes per response, and the public reporting burden for renewal by telephone or via the internet is estimated to average six minutes per response. The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see ADDRESSES).

**List of Subjects**

**15 CFR Part 902**

Reporting and recordkeeping requirements.

**50 CFR Part 635**

Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: June 1, 2001.  
**William T. Hogarth,**  
*Acting Assistant Administrator for Fisheries,  
 National Marine Fisheries Service.*

For the reasons set out in the preamble, 15 CFR chapter IX and 50 CFR Chapter VI are amended as follows:

**15 CFR Chapter IX**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by removing the entries for part 635 from § 635.4(d) through § 635.69(a), and, in the right hand column in corresponding positions, the control numbers, and by adding in their place the following entries to read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648-)
(b) Display.	
50 CFR	
635.4(b)	-0327
635.4(d)	-0327
635.4(g)	-0202 and -0205
635.5(a)	-0371 and -0328
635.5(b)	-0013 and -0239
635.5(c)	-0328
635.5(d)	-0323
635.6	-0373
635.7(c)	-0374
635.26	-0247
635.31(b)	-0216
635.32	-0309
635.33	-0338
635.42	-0040
635.43	-0040
635.44	-0040
635.46(b)	-0363
635.69(a)	-0372

**50 CFR Chapter VI**

**PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES**

3. The authority citation for part 635 continues to read as follows:

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

4. In § 635.4, paragraphs (b)(1), and (d)(1) through (d)(3) are revised to read as follows:

**§ 635.4 Permits and fees.**

\* \* \* \* \*

(b) *HMS Charter/Headboat Permits.*  
 (1) The owner of a charter boat or headboat used to fish for, take, retain, or possess any Atlantic HMS must obtain an HMS Charter/Headboat permit. A vessel issued an Atlantic HMS Charter/Headboat permit, during such permit's period of validity, shall not be issued an Atlantic Tunas permit in any category.

\* \* \* \* \*

(d) *Atlantic Tunas vessel permits.* (1)  
 The owner of each vessel used to fish for or take Atlantic tunas or on which Atlantic tunas are retained or possessed must obtain, in addition to any other required permits, an HMS Charter/Headboat permit issued under paragraph (b) of this section, or an Atlantic Tunas permit in one, and only one, of the following categories: Angling, General, Harpoon, Longline, Purse Seine, or Trap.

(2) Persons aboard a vessel with a valid Atlantic Tunas vessel permit or HMS Charter/Headboat permit may fish for, take, retain, or possess Atlantic tunas, but only in compliance with the quotas, catch limits, size classes, and gear applicable to the permit category of the vessel from which he or she is fishing. Persons may sell Atlantic tunas only if the harvesting vessel has a valid permit in the General, Harpoon, Longline, Purse Seine, or Trap category of the Atlantic tunas permit or a valid HMS Charter/Headboat permit. Persons may not sell Atlantic tunas caught on board a vessel issued a permit in the Angling category.

(3) Except for vessels with an Atlantic Tunas purse seine category permit, a vessel owner may change the category of the vessel's Atlantic Tunas permit or change between an Atlantic Tunas permit and the Atlantic HMS Charter/Headboat permit no more than once each year and only from January 1 through May 15. From May 16 through

December 31, the vessel's permit or permit category may not be changed, regardless of a change in the vessel's ownership.

\* \* \* \* \*

**§ 635.5 [Amended]**

5. In § 635.5, paragraph (a)(1) the reference “§ 635.4(c)” is removed and

replaced with the reference “§ 635.4(b)”

.

**§ 635.71 [Amended]**

6. In § 635.71, paragraph (a)(27) the reference “§ 635.4(c)(2)” is removed and replaced with the reference “§ 635.4(b)”.  
[FR Doc. 01-14288 Filed 6-1-01; 4:52 pm]

**BILLING CODE 3510-22-S**

# Proposed Rules

Federal Register

Vol. 66, No. 110

Thursday, June 7, 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 71

[Docket No. FAA-2001-9559; Airspace Docket No. 01-AWP-2]

RIN 2120-AA66

#### Proposed Revision of VOR Federal Airway 105 and Jet Route 86; AZ

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

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

**SUMMARY:** This action proposes to revise Federal Airway 105 (V-105) and Jet Route 86 (J-86) in the vicinity of Arizona. Specifically, the FAA is proposing to revise V-105 between the Drake and Phoenix, AZ, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aids (VORTAC) in order to manage aircraft operations in the Phoenix, AZ, terminal area. Additionally, the FAA is proposing to revise J-86 between Winslow, AZ, and Peach Springs, AZ, as part of the National Airspace Redesign effort and to improve system efficiency in the Phoenix, AZ, area.

**DATES:** Comments must be received on or before July 23, 2001.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2001-9559/Airspace Docket No. 01-AWP-2, at the beginning of your comments.

You may also submit comments on the Internet at <http://dms.dot.gov>. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1-800-

647-5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

**FOR FURTHER INFORMATION CONTACT:** Ken McElroy, Airspace and Rules Division, ATA-400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA-2001-9559/Airspace Docket No. 01-AWP-2." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at <http://dms.dot.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at <http://www.faa.gov> or the Superintendent of Document's web page at <http://www.access.gpo.gov/nara>.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA-400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267-9677, for a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

#### The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to revise V-105 and J-86 in the vicinity of Arizona. Specifically, this notice is proposing to revise V-105 between the Drake and Phoenix, AZ, VORTAC in order to improve the management of aircraft operations in the Phoenix, AZ, terminal area. Although these changes will result in a slight increase in distance, the proposed actions will properly align these routes to facilitate operations in the Phoenix Terminal Area. Additionally, in this action the FAA is proposing to revise J-86 between Winslow, AZ, and Peach Springs, AZ, as part of the National Airspace Redesign effort and to improve system efficiency in the Phoenix, AZ, area.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet routes and Domestic VOR Federal airways are published in paragraphs 2004 and 6010(a), respectively, of FAA Order 7400.9H dated September 1, 2000, and effective September 16, 2000, which is incorporated by reference in 14 CFR 71.1. The jet route and VOR Federal airway listed in this document would be published subsequently in the order.

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

Airspace, Incorporation by reference, Navigation (air).

#### The Proposed Amendment

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

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

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

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

##### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9H, Airspace Designations and Reporting Points, dated September 1, 2000, and effective September 16, 2000, is amended as follows:

##### Paragraph 2004 Jet Routes

\* \* \* \* \*

##### J-86 [Revised]

From Beatty, NV; INT Beatty 131° and Boulder City, NV 284° radials; Boulder City; Peach Springs, AZ; INT of Peach Springs 091°(076°M) and Winslow, AZ, 301°(287°M) radials; El Paso, TX; Fort Stockton, TX; Junction, TX; Humble, TX; Leeville, LA; INT Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT Sarasota 103° and La Belle, FL, 313° radials; La Belle; to Dolphin, FL.

\* \* \* \* \*

##### Paragraph 6010(a) Domestic VOR Federal Airways

\* \* \* \* \*

##### V-105 [Revised]

From Tucson, AZ; INT Tucson 300° and Stanfield, AZ 145° radials; Stanfield; Phoenix, AZ; INT Phoenix 321°(309°M) and

Drake, AZ, 168°(154°M) radials; Drake; 25 miles, 22 miles 85 MSL; Boulder City, NV; Las Vegas, NV; INT Las Vegas 266° and Beatty, NV, 142° radials; 17 miles, 105 MSL; Beatty; 105 MSL, Coaldale, NV; 82 miles, 110 MSL; to Mustang, NV.

\* \* \* \* \*

Issued in Washington, DC, on May 31, 2001.

**Reginald C. Matthews,**

*Manager, Airspace and Rules Division.*

[FR Doc. 01-14328 Filed 6-6-01; 8:45 am]

**BILLING CODE 4910-13-P**

#### CONSUMER PRODUCT SAFETY COMMISSION

##### 16 CFR Part 1115

#### Substantial Product Hazard Reports

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Proposed revision to interpretative rule.

**SUMMARY:** Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b), requires manufacturers, distributors, and retailers of consumer products to report potential product hazards to the Commission. The Consumer Product Safety Commission publishes a proposed revision to its interpretative rule advising manufacturers, distributors, and retailers how to comply with the requirements of section 15(b). The proposed revision points out that information concerning products manufactured or sold outside of the United States that may be relevant to the existence of potential defects and hazards associated with products distributed within the United States should be evaluated and may lead to a report under section 15(b).

**DATES:** Comments from the public are due no later than July 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Marc Schoem, Director, Division of Recalls and Compliance, Consumer Product Safety Commission, Washington, DC 20207, telephone—(301) 504-0608, ext. 1365, fax—(301) 504-0359, E-mail address—mschoem@cpsc.gov.

**SUPPLEMENTARY INFORMATION:** Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b) requires manufacturers, distributors, and retailers of consumer products to report potential product hazards to the Commission. In 1978, the Commission published an interpretative rule, 16 CFR 1115, that clarified the Commission's understanding of this requirement and that established policies and procedures

for filing such reports and proffering remedial actions to the Commission. That rule talks generally about the types of information a firm should evaluate in considering whether to report, but does not specifically address information about experience with products manufactured or sold outside of the United States. Neither the statute, nor the rule itself, suggests that firms need not evaluate such information and, when appropriate, report to the Commission under section 15(b).

Over the past several years, the Commission has received section 15(b) reports that have included information on experience with products abroad. When appropriate, the agency has initiated recalls based in whole or in part on that experience. In addition, the Firestone tire recall of 2000 focused public attention on the possible relevance of information generated abroad to the safety of products used in the United States. Accordingly, to assure that firms who obtain information generated abroad are aware that they should consider such information in deciding whether there is a need to report under section 15(b), the staff recommended that the Commission issue a policy statement to this effect. On January 3, 2001, the Commission solicited comments on a proposed policy statement summarizing the Commission's position that, under section 15(b), information concerning products sold outside of the United States may be relevant to defects and hazards associated with products distributed within the United States.

On May 17, 2001, after receiving and analyzing the comments, the Commission voted to issue a final policy stating that information concerning products manufactured or sold outside of the United States which may be relevant to the existence of potential defects and hazards associated with products distributed within the United States should be evaluated and may be reportable under section 15(b). The Commission's analysis of those comments and the final policy statement are published elsewhere in this edition of the **Federal Register**.

The Commission believes that members of the public should fully understand their obligations under the law. In the context of the obligation to evaluate and, if necessary, to report information from outside the United States under section 15(b), the Commission believes that it can best accomplish this objective by amending the existing interpretative rule to reflect the substance of the policy statement. Accordingly, the Commission proposes to amend the interpretative rule as

specified below. Although the Commission previously accepted and analyzed public comment on this subject when it issued the policy statement, the policy statement did not offer a specific amendment to the interpretative reporting rule. The Commission has, therefore, elected to solicit public comment on the proposed amendment, even though, as an amendment to an interpretative rule, notice and comment is not required under the Administrative Procedure Act. To assist members of the public who wish to comment, the Commission has included the text of the final policy statement in this notice.

#### **Guidance Document on Reporting Information Under 15 U.S.C. 2064(b) About Potentially Hazardous Products Manufactured or Distributed Outside the United States**

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), imposes specific reporting obligations on manufacturers, importers, distributors and retailers of consumer products distributed in commerce. A firm that obtains information that reasonably supports the conclusion that such a product:

- Fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA,
- Contains a defect that could create a substantial product hazard as defined in section 15(a)(2) of the CPSA, 15 U.S.C. 2064(a)(2), or
- Creates an unreasonable risk of serious injury or death must immediately inform the Commission unless the firm has actual knowledge that the Commission has been adequately informed of the failure to comply, defect, or risk.

The purpose of reporting is to provide the Commission with the information it needs to determine whether remedial action is necessary to protect the public. To accomplish this purpose, section 15(b) contemplates that the Commission receive, at the earliest time possible, all available information that can assist it in evaluating potential product hazards. For example, in deciding whether to report a potential product defect, the law does not limit the obligation to report to those cases in which a firm has finally determined that a product in fact contains a defect that creates a substantial product hazard or has pinpointed the exact cause of such a defect. Rather, a firm must report if it obtains information which *reasonably supports* the conclusion that a product it manufactures and/or distributes

contains a defect which *could* create such a hazard or that the product creates an unreasonable risk of serious injury or death. 15 U.S.C. 2064(b)(2) and (3); 16 CFR 1115.4 and 6. Nothing in the reporting requirements of the CPSA or the Commission's interpretive regulation at 16 CFR part 1115 limits reporting to information derived solely from experience with products sold in the United States. The Commission's interpretive rule enumerates, at 16 CFR 1115.12(f), examples of the different types of information that a firm should consider in determining whether to report. The regulation does not exclude information from evaluation because of its geographic source. The Commission interprets the statutory reporting requirements to mean that, if a firm obtains information that meets the criteria for reporting listed above and that is relevant to a product it sells or distributes in the U.S., it must report that information to the CPSC, no matter where the information came from. Such information could include incidents or experience with the same or a substantially similar product, or a component thereof, sold in a foreign country.

Over the past several years, the Commission has received reports under section 15(b) that have included information on experience with products abroad, and, when appropriate, has initiated recalls based in whole or in part on that experience. Thus, a number of companies already view the statutory language as the Commission does. However, with the expanding global market, more firms are obtaining this type of information, but many may be unfamiliar with this aspect of reporting. Therefore, the Commission issues this policy statement to assist those firms in complying with the requirements of section 15(b) of the Consumer Product Safety Act.

*Proposed Effective Date:* The Commission proposes that this revision become effective 30 days after the date of publication of the revised final interpretative rule in the **Federal Register**.

#### **List of Subjects in 16 CFR Part 1115**

Administrative practice and procedure, Business and industry, Consumer protection, Reporting and recordkeeping requirements.

In accordance with the procedures of 5 U.S.C. 553 and under the authority of the Consumer Product Safety Act, 15 U.S.C. 2051 et seq., the Commission proposes to amend part 1115 of title 16, Chapter II, of the Code of Federal Regulations as follows:

#### **PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS**

1. The authority citation for part 1115 continues to read as follows:

**Authority:** 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2070, 2071, 2073, 2076, 2079 and 2084.

2. Section 1115.12(f) introductory text is revised to read as follows:

#### **§ 1115.12 Information which should be reported; evaluating substantial product hazards.**

\* \* \* \* \*

(f) *Information which should be studied and evaluated.* Paragraphs (f)(1) through (7) of this section are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA. Such information may include information about product experience, performance, design, or manufacture outside the United States that is relevant to products sold or distributed in the United States. All information should be evaluated to determine whether it suggests the existence of a noncompliance, a defect, or an unreasonable risk of serious injury or death:

\* \* \* \* \*

Dated: June 1, 2001.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 01-14298 Filed 6-6-01; 8:45 am]

**BILLING CODE 6355-01-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 52**

[IN135-1; FRL-6993-6]

#### **Approval and Promulgation of Implementation Plans; Indiana**

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

**ACTION:** Proposed rule.

**SUMMARY:** On November 15, 2000, the State of Indiana submitted a State Implementation Plan (SIP) revision request to the EPA which tightens Volatile Organic Compound (VOC) regulations for cold cleaning degreasing operations in Clark, Floyd, Lake and Porter Counties, which are nonattainment for ozone. VOC combines with oxides of nitrogen in the atmosphere to form ground-level ozone, commonly known as smog. Exposure to ozone is associated with a wide variety

of human health effects, agricultural crop loss, and damage to forests and ecosystems. The State has included the tightened cold cleaning degreasing regulations in its 2002, 2005 and 2007 Rate-Of-Progress (ROP) Plans and its 2007 attainment demonstration for Lake and Porter Counties. Indiana expects that the control measures specified in this SIP revision will reduce VOC emissions in Clark, Floyd, Lake and Porter Counties. EPA is proposing to approve this SIP revision request.

**DATES:** Written comments must be received on or before July 9, 2001.

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

Copies of this SIP revision request are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Steven Rosenthal at (312) 886-6052 before visiting the Region 5 Office.)

**FOR FURTHER INFORMATION CONTACT:** Steven Rosenthal, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone: (312) 886-6052, E-Mail: rosenthal.steven@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms "you" and "me" refer to the reader of this proposed rulemaking and to sources subject to the State rule addressed by this proposed rulemaking, and the terms "we," "us," or "our" refer to the EPA.

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## I. Background

### A. What Is a State Implementation Plan (SIP)

Section 110 of the Clean Air Act (Act or CAA) requires states to develop air pollution control regulations and strategies to ensure that state air quality meets the national ambient air quality standards established by the EPA. Each state must submit the regulations and emission control strategies to the EPA for approval and promulgation into the federally enforceable SIP.

Each federally approved SIP protects air quality primarily by addressing air pollution at its points of origin. The SIPs can be and generally are extensive, containing many state regulations or other enforceable documents and supporting information, such as emission inventories, monitoring documentation, and modeling (attainment) demonstrations.

### B. What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the federally enforceable SIP, states must formally adopt the regulations and emission control strategies consistent with state and federal requirements. This process generally includes public notice, public hearings, public comment periods, and formal adoption by state-authorized rulemaking bodies.

Once a state has adopted a rule, regulation, or emissions control strategy it submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed federal action on the state submission. If we receive adverse comments we address them prior to any final federal action (we generally address them in a final rulemaking action).

The EPA incorporates into the federally approved SIP all state regulations and supporting information it has approved under section 110 of the Act. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, titled "Approval and Promulgation of Implementation Plans." The actual state regulations the EPA has approved are not reproduced in their entirety in the CFR, but are "incorporated by reference," which means that EPA has approved a given state regulation (or rule) with a specific effective date.

### C. What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of a state regulation before and after it is incorporated into a federally approved SIP is primarily a

state responsibility. After the regulation is federally approved, however, the CAA authorizes the EPA to take enforcement actions against violators. The CAA also offers citizens legal recourse to address violations, as provided in section 304 of the Act.

### D. What Is the Purpose of This Cold Cleaning Degreasing Rule?

Section 182(c)(2)(B) of the Act requires any serious and above ozone nonattainment area to achieve post-1996 ROP reductions of 3 percent of VOC 1990 baseline emissions per year, averaged over each consecutive 3-year period, until the area has achieved attainment of the 1-hour ozone National Ambient Air Quality Standard. In Indiana, Lake and Porter Counties are classified as "severe" nonattainment for the 1-hour ozone standard. As such, the Northwest Indiana nonattainment area is subject to the post-1996 ROP requirement.

The Act specifies under section 182(b)(1)(C) that emission reductions claimed under ROP plans must be achieved through the implementation of control measures through revisions to the SIP, the promulgation of federal rules, or the issuance of permits under Title V of the Act. The state may not include as part of its ROP reduction control measures implemented before November 15, 1990.

Indiana has submitted tightened cold cleaning degreasing rules for the control of VOC as a revision to the SIP for the purpose of meeting post-1996 ROP requirements for the Northwest Indiana ozone nonattainment area and to reduce VOC emissions in Clark and Floyd counties. Cold cleaning degreasing is used to remove grease and oil from metal parts.

### E. What Are the Key Milestone Dates for This Rule?

Indiana held a public hearing on the tightened rules on February 4, 1998, in Indianapolis, Indiana. The Indiana Air Pollution Control Board finally adopted the rules on November 4, 1998. The rule revisions became effective May 27, 1999, and were formally submitted to EPA on November 15, 2000, as a revision to the Indiana SIP for ozone.

The November 15, 2000, submittal includes amendments to 326 IAC 8-3-1 Applicability and 326 IAC 8-3-8 Material Requirements for Cold Cleaning Degreasers

## II. Evaluation of the Rule

### A. What Are the Basic Components of the State's Rule?

Indiana originally implemented cold cleaning degreasing rules, which are

contained in 326 IAC 8-3, as part of its Reasonably Available Control Technology (RACT) requirements for VOC control. The November 15, 2000 SIP revision submittal amends section 326 IAC 8-3-1 and adds section 326 IAC 8-3-8, material requirements for cold cleaning degreasers, which tightens requirements for operators of cold cleaning degreasers and adds new requirements for sellers of solvent for use in cold cleaning degreasing operations. The rules are more stringent because a requirement has been added limiting the vapor pressure of the cleaning solvents to 1.0 millimeters of mercury (mm Hg), which is lower than the vapor pressure of cleaning solvents that are typically used. Lowering the vapor pressure reduces the amount of VOC emissions generated from this degreasing operation.

As previously discussed, this SIP revision submittal is required by the Act to the extent that Indiana submitted the rule to meet its post-1996 ROP requirements. The EPA will review the rule and address what emission reductions this SIP revision is expected to achieve for purposes of ROP when it undertakes rulemaking action on Indiana's post-1996 ROP plan for Northwest Indiana.

To determine whether the Indiana submittal meets the requirements for an approvable SIP revision, the EPA reviewed the rules for their consistency with section 110 and part D of the Act. A discussion of the rules and EPA's evaluation follows.

#### Material Requirements

Section 326 IAC 8-3-8 has been added to limit the vapor pressure of solvent used or sold for use in cold cleaning degreasing operations in Clark, Floyd, Lake and Porter Counties. Beginning November 1, 1999, the vapor pressure limit is 2.0 mm Hg, or 0.038 pounds per square inch (psi) measured at 20 degrees Celsius (C) (68 degrees Fahrenheit (F)). On May 1, 2001, the vapor pressures limit is tightened to 1.0 mm Hg (0.019 psi) measured at 20 degrees C (68 degrees F).

#### Exemptions

The supplier sale requirements in Section 326 IAC 8-3-8(c) do not apply to the sale of 5 gallons or less of solvents during any 7 consecutive days to an individual or business. This cutoff level is only expected to exempt a very small amount of the total solvent sold.

Section 326 IAC 8-3-8(a) exempts the cleaning of electronic components from the vapor pressure limits under section 326 IAC 8-3-8(c). Indiana has defined "electronic components" under section

326 IAC 8-3-8(b) as all components of an electronic assembly, including, but not limited to, circuit board assemblies, printed wire assemblies, printed circuit boards, soldered joints, ground wires, bus bars, and any other associated electronic component manufacturing equipment. Indiana added this exemption because solvents limited to 1.0 mmHg vapor pressure do not adequately clean certain types of electronic equipment.

#### Recordkeeping

Section 326 IAC 8-3-8(d) requires subject solvent suppliers and users to maintain documents which indicate the solvent's vapor pressure at the prescribed temperature. The marketers of cold cleaning solvents to users must keep records indicating the name and address of the solvent purchaser, the date of purchase, the type of solvent purchased, the unit volume of the solvent, the total volume purchased, and the vapor pressure of the solvent purchased measured in mmHg at 20 degrees C (68 degrees F). Solvent users must maintain records for each solvent purchase indicating the name and address of the solvent supplier, the date of the solvent purchase, the type of solvent purchased, and the vapor pressure of solvent measured in mmHg at 20 degrees C (68 degrees F). These records must be kept on-site for 3 years and be reasonably accessible for an additional 2 years.

As discussed above, these recordkeeping provisions require that both the sellers and users of the cleaning solvents keep records of the vapor pressure. Material Safety Data Sheets, which are required by Occupational Health and Safety regulations (20 CFR 1918), must specify the vapor pressure of the solvent (this Occupational Health and Safety requirement affects but is not directly referenced by Indiana's rule). In its response to a comment on recordkeeping Indiana stated (in the September 1, 1997, Indiana register): "To fulfill the recordkeeping requirements of this rule the user of a cold cleaning degreaser would need to maintain a Material Safety Data Sheet and a sales receipt." These record requirements provide a sufficient basis to enforce the applicable rules.

#### *B. Is This Rule Approvable?*

This rule change requires the use of cleaning solvents with a lower vapor pressure than what is typically used. This makes the rule more stringent, because the lower the vapor pressure the less VOC emissions are generated.

These rule revisions are, therefore, approvable.

### III. Proposed Action

#### *A. What Action Is EPA Proposing Today?*

The EPA is proposing to approve Indiana's tightened cold cleaning degreasing rules for Clark, Floyd, Lake and Porter Counties.

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This proposed action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 proposes to approve a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement

for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Volatile organic compounds, Ozone.

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

Dated: May 30, 2001.

**Norman Neidergang,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 01-14377 Filed 6-6-01; 8:45 am]

BILLING CODE 6560-50-U

## DEPARTMENT OF VETERANS AFFAIRS

### 48 CFR Parts 801, 806, 812, 837, 852, and 873

RIN 2900-A171

#### VA Acquisition Regulation: Simplified Acquisition Procedures for Health-Care Resources

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Withdrawal of proposed rule and promulgation of a new proposed rule.

**SUMMARY:** This document withdraws the proposed rule concerning simplified acquisition procedures for health-care resources published in the **Federal Register** on November 9, 1998, and promulgates a new proposed rule

concerning simplified acquisition procedures for health-care resources. This new proposed rule document would amend the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space, pursuant to 38 U.S.C. 8151-8153. Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, authorized VA to prescribe simplified procedures for the procurement of health-care resources. This proposed rule prescribes those procedures.

**DATES:** Comments on this proposed rule should be submitted on or before August 6, 2001 to be considered in the formulation of the final rule.

**ADDRESSES:** Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273-9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900-A171." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

**FOR FURTHER INFORMATION CONTACT:** Dennis Foley, (202) 273-9225, Office of the General Counsel, Professional Staff Group V; or Don Kaliher, (202) 273-8819, Acquisition Resources Service, Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

**SUPPLEMENTARY INFORMATION:** On November 9, 1998, we published in the **Federal Register** (63 FR 60256) a proposed rule to amend the Department of Veterans Affairs Acquisition Regulation (VAAR), pursuant to 38 U.S.C. 8151-8153, to establish simplified procedures for the competitive acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. This document withdraws the proposed rule of November 9, 1998. In its place, we are promulgating a new proposed rule concerning the same subject matter. The new proposed rule is changed from the withdrawn proposed rule as explained below. Also, this document addresses the public comments that we received in response to the withdrawn proposed rule. Comments were solicited

concerning the November 9, 1998, proposal for 60 days, ending January 9, 1999.

Based on the public comments received, we have determined that a revised proposed rule is necessary to more fully address the potential impact of the proposed rule on small business. In this regard, we have added an initial regulatory flexibility analysis.

Currently, the acquisition of health-care resources that consist of commercial services or the use of medical equipment or space is governed by the VAAR and the Federal Acquisition Regulation (FAR). Statutory provisions at 38 U.S.C. 8153 (Pub. L. 104-262) specifically authorize the Secretary of Veterans Affairs, after consultation with the Administrator for Federal Procurement Policy, to establish simplified procedures for the competitive procurement of such health-care resources. VA has consulted with the Administrator for Federal Procurement Policy and VA proposes to establish simplified procedures as set forth in this document. These proposed simplified procedures are applicable only to acquisitions conducted by the Veterans Health Administration (VHA), one of three administrations that comprise the Department of Veterans Affairs.

Under the provisions of Pub. L. 104-262, procurements under the simplified procedures may be conducted "without regard to any law or regulation that would otherwise require the use of competitive procedures." Accordingly, the competitive procedures of any laws and regulations (including the competitive procedures of FAR and VAAR and their underlying laws) would be superseded by the simplified procedures. However, under the provisions of Pub. L. 104-262, with certain exceptions, the simplified procedures are required to "permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted." This allows VA to limit competition to the extent it determines reasonable for the circumstances of each particular acquisition. Consistent with the principles set forth above, this document proposes to establish a new VAAR Part 873 setting forth such simplified procedures.

Under the provisions of 38 U.S.C. 8153, health-care resources consisting of commercial services, the use of medical equipment or space, or research, acquired from an institution affiliated with VA in accordance with 38 U.S.C.

7302, including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), blood banks, organ banks, or research centers, may be procured without regard to any law or regulation that would otherwise require the use of competitive procedures. The provisions at new VAAR 873.104 contain a statement explaining this sole source acquisition authority. This authority, which is in accordance with statute, is not dependent upon this rulemaking.

This rule applies only to the acquisition of health-care resources that are commercial services or the use of medical equipment or space. Thus, the proposed rule would apply only to acquisitions conducted by VHA in support of the medical care programs of VA. It would not apply to acquisitions of commercial services conducted by the Veterans Benefits Administration or the National Cemetery Administration. The following discussions only apply to VHA acquisitions of health-care resources.

Proposed section 873.101, Policy, would provide that the procedures set forth in Part 873 would apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures would be used in conjunction with FAR, but VAAR Part 873 would take precedence over FAR and other parts of VAAR. Currently, VAAR implements and supplements FAR. However, Pub. L. 104-262 grants VA authority to procure health-care resources consisting of commercial services or the use of medical equipment or space "without regard to any other law or regulation that would require the use of competitive procedures \* \* \*." Therefore, it is necessary to have Part 873 of VAAR take precedence over FAR and any other part of VAAR.

Proposed section 873.102 would add definitions for "commercial service," "health-care providers," and "health-care resource." These definitions restate provisions of 38 U.S.C. 8152 and 8153. Previously, because of limitations under 38 U.S.C. 8153 which were in effect prior to Pub. L. 104-262, procurements under the authority of 38 U.S.C. 8153 were limited to "specialized medical resources." Consistent with the new definitions, the simplified procedures are more expansive and would govern procurements of all commercial services or the use of medical equipment or space, not just those that are considered to be "specialized medical resources."

FAR 8.001(a)(2) sets forth four levels of priority for the acquisition of services. These are, in descending order of priority, (i) services available from the Committee for Purchase from People who are Blind or Severely Disabled; (ii) mandatory Federal Supply Schedules (FSS); (iii) optional use FSS; and (iv) Federal Prison Industries, Inc., or commercial sources (including educational and non-profit institutions). Proposed section 873.103 would exempt acquisitions under this proposed rule from the provisions of FAR 8.001(a)(2) regarding the lowest three levels of priority. For VA, there are no longer any mandatory use FSS (the highest level of priority of the three levels proposed for elimination), so elimination of this priority level has no impact. As to the second level, optional use FSS, even without the priority levels, VA contracting officers would still be able to place delivery orders against optional use FSS contracts in accordance with FAR 8.404 without seeking competition. However, they would not be required to do so by the list of priority sources. Under the proposed rule, it would be at the contracting officer's discretion whether or not to issue a delivery order against an optional use FSS contract or to seek competition. This is necessary to ensure that VA has maximum flexibility to seek the highest quality services available, either from optional use FSS contractors or through a competitive acquisition. If the contracting officer does seek competition, contractors formerly at the lowest level of priority (i.e., commercial sources) would then be able to compete for those services. It is not proposed to affect the priority status for the acquisition of services available from the Committee for Purchase from People who are Blind or Severely Disabled, as required by the Javits-Wagner-O'Day (JWOD) Act. JWOD Act programs offer a valuable source of services for VA and have proven to be highly beneficial for both VA and program participants. The JWOD Act programs support VA's and other Federal Government agencies' procurement needs and generate employment and training opportunities for people who are blind or have other severe disabilities. It is in the best interest of the Government to continue to support these valuable programs.

Proposed section 873.104, paragraphs (a) and (b), would restate the authority provided in the Act to acquire health-care resources that are commercial services or the use of medical equipment or space from entities affiliated with VA, in accordance with 38 U.S.C. 7302, or approved entities

associated with an affiliate (entities will be approved if determined legally to be associated with affiliated institutions), on a sole source basis without public notice and without further justification. Proposed section 873.104, paragraph (c), would provide that, on VA acquisitions of commercial services or the use of medical equipment or space from other sources, contracting officers would be required to seek competition to the maximum extent practicable. This is consistent with provisions of the Act, which provide that procurements may be conducted without regard to any law or regulation that would otherwise require use of competitive procedures. Competition to the maximum extent practicable is required to ensure that VA's acquisitions of commercial services or the use of medical equipment or space are conducted in an efficient and expeditious manner. Proposed section 873.104, paragraph (d), restates the requirements of the Act that sole source acquisitions from sources other than affiliates or approved associates of affiliates (entities will be approved if determined legally to be associated with affiliated institutions) be justified and approved.

Proposed section 873.105 would reiterate the importance of acquisition planning. The section would impose a requirement to form an acquisition team for high dollar value acquisitions (acquisitions exceeding \$100,000). The team would be required to assure that the acquisition is properly coordinated and managed and to conduct market research. To promote streamlining, the section would authorize the use of a simplified process for documenting the acquisition plan. Under this process, contracting officers would obtain approval of and document the acquisition approach through the conduct of an acquisition strategy meeting in lieu of a written acquisition plan. These changes are necessary to ensure that high dollar value acquisitions are properly planned and coordinated, while still providing a streamlined process for documenting the contract file.

Proposed section 873.106 would exempt VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space from most of the market research requirements of FAR Part 10 but would provide optional market research techniques tailored specifically for use in acquiring commercial services or the use of medical equipment or space. This change is necessary to simplify market research while ensuring that contracting officers have a full range of techniques available specifically tailored for use in

conducting market research when acquiring commercial services or the use of medical equipment or space.

Proposed paragraph (a) of section 873.107 would require the contracting officer to set aside acquisitions of health-care resources for small business concerns if, through market research, the contracting officer determines that there is a reasonable expectation that reasonably priced offers would be received from two or more responsible small business concerns. This proposed section would also provide additional authority, over and above that found at FAR 19.502, for waiving the requirement for small business set-asides. FAR 19.502 currently provides that contracting officers can elect to not set aside a procurement if, generally, the contracting officer determines that there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns at fair market prices. In addition to that authority in FAR, under this proposed rule, the head of the contracting activity would have the authority to approve a waiver from the requirement to set aside a procurement of health-care resources, based on a determination that it is in the best interest of the Government. This provision is necessary to ensure that VA can procure health-care resources consisting of commercial services or the use of medical equipment or space from the highest quality sources while still supporting small business concerns to the maximum practicable extent.

The rule would make certain changes to the administration of VA's small business program as it applies to the acquisition of health-care resources to reflect the fast-moving health-care market. For example, proposed paragraph (b) of section 873.107 would establish a streamlined process for handling disagreements between VA and the Small Business Administration regarding whether a procurement should be set aside for small business. These streamlined procedures would not alter VA's ongoing commitment to small business participation in its acquisitions of health-care resources. Nor would they affect efforts to mitigate any potential negative impacts of contract consolidations on small businesses' ability to secure work. VA's Office of Small and Disadvantaged Business Utilization and Office of Acquisition and Materiel Management would jointly monitor the impact of the new procedures on small business participation to ensure opportunities are available for competitive small businesses.

Paragraph (c) of section 873.107 restates VA's intent to follow the FAR

regarding the SBA 8(a) program. Paragraph (d) provides that VA's Office of Small and Disadvantaged Business Utilization and SBA's Office of Industrial Assistance shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency.

FAR Part 5 currently requires, with certain exceptions, that an acquisition with a value exceeding \$25,000 be synopsisized in the Governmentwide point of entry (GPE) (and, until January 1, 2002, in the Commerce Business Daily (CBD)) for specified periods of time and states what must be included in the announcement. Proposed section 873.108 would: exempt VA acquisitions of health-care resources consisting of commercial services or the use of medical equipment or space below \$100,000 from this requirement; modify the requirement for publication of acquisitions above \$100,000 to only require public announcement, utilizing a medium designed to obtain competition to the maximum extent practicable; set the time requirements for announcement to be a "reasonable time"; and modify what must be included in the announcement. The medium to be used for announcements could be the GPE (FedBizOpps, <http://www.fedbizopps.gov>) or any other means, as appropriate, depending on the complexity of the acquisition. 38 U.S.C. 8153 authorizes VA to conduct procurements for health-care resources that are commercial services or the use of medical equipment or space without regard to any law or regulation that would otherwise require the use of competitive procedures. In accordance with that authority, this section also proposes to exempt acquisitions from affiliates and entities associated with affiliates and sole source acquisitions of medical services from other sources from the requirement for publication of notice in the GPE. These provisions would streamline and simplify VA's acquisitions of commercial services or the use of medical equipment or space.

Proposed paragraphs (a) and (b) of section 873.109 would emphasize that the contracting officer (rather than the team) is the selecting official and would provide guidance to contracting officers on statements of work and specifications. FAR requires certain documentation in contract files. Proposed paragraph (c) would provide simplified documentation requirements to be used in lieu of the FAR requirements. FAR requires specific time frames for announcing solicitations and procurement opportunities to the public and provides, for commercial solicitations, that bids or proposals

received late shall not be considered. The FAR does not specifically address late quotations. Proposed paragraph (d)(1) would replace FAR announcement time requirements with a "reasonable" time requirement and paragraph (d)(2) would allow the contracting officer to accept late quotations or proposals if late receipt is determined by the contracting officer to be in the best interest of the Government. Late bids received in response to an invitation for bid (IFB) would not be considered and the FAR provisions regarding late bids would still apply. FAR provides certain minimum requirements that a contracting officer must meet before a solicitation may be canceled. Proposed paragraph (e) would exempt VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space from those minimum requirements and would provide that a contracting officer could cancel a solicitation if cancellation is determined to be in the best interest of the Government. All of these changes are proposed for the purpose of streamlining and simplifying VA's acquisitions of commercial services or the use of medical equipment or space.

Proposed section 873.110, paragraphs (a) through (e), would provide guidance to contracting officers on when to use the provisions and clauses in Part 852 of VAAR in VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space. Paragraph (f) would propose to require use of FAR clause 52.207-3, Right of First Refusal, and the VAAR clause at 852.207-70, Report of employment under commercial activities, in a solicitation in which current VA employees might be displaced as a result of contract award. The FAR clause ensures that those employees have a right of first refusal to any employment openings created with the contractor as a result of the contract award. The VAAR clause requires the contractor to report employment openings and progress in hiring former VA employees. These requirements are necessary to protect VA employees and to reduce the cost of contract award by reducing or avoiding unemployment compensation costs.

FAR places certain restrictions on when each type of acquisition procedure can be used. For instance, a request for quotation (RFQ) can be used to solicit quotations for non-commercial service acquisitions costing up to \$100,000 and, until January 1, 2002, for commercial service acquisitions costing up to \$5 million. Proposed section

873.111 would allow use of the RFQ process for any acquisition of commercial services or the use of medical equipment or space conducted under this VAAR part, regardless of dollar value. This change is necessary to simplify VA's acquisition of commercial services or the use of medical equipment or space and to provide maximum flexibility to contracting officers.

Until January 1, 2002, FAR requires the use of full and open competition for commercial service acquisitions exceeding \$5 million unless other statutory authority exists to limit competition. If this authority is not extended, after January 1, 2002, the FAR requirement to use full and open competition will apply to such acquisitions exceeding \$100,000. Paragraph (a)(1) of section 873.111 would provide, for VA acquisitions of health-care resources that are commercial services or the use of medical equipment or space, that competition to the maximum extent practicable may be used in lieu of full and open competition, regardless of the dollar value of the acquisition. Proposed paragraph (a)(2) would exempt VA acquisitions of commercial services or the use of medical equipment or space from any dollar value restrictions in FAR on the use of RFQs, allowing VA to use the RFQ process for all acquisitions of health-care resources that are commercial services or the use of medical equipment or space, regardless of the dollar value of the procurement. These changes are necessary to simplify and streamline VA's acquisition of commercial services or the use of medical equipment or space by allowing use of the RFQ process in any circumstance.

Proposed paragraph (b) of section 873.111 is advisory only and would provide that the procedures of FAR Part 14 would continue to be used for VA sealed bid acquisitions of commercial services or the use of medical equipment or space. Proposed paragraph (c) of section 873.111 would provide that the negotiation procedures of FAR Parts 12, 13, and 15 would be used for negotiated acquisitions of commercial services or the use of medical equipment or space, except as modified in VAAR Part 873. This paragraph is also advisory.

Proposed paragraph (d) of section 873.111 would provide an alternative negotiation procedure using a multiphase negotiation technique. This would supersede current FAR provisions for an advisory multi-step process that does not allow the Government to exclude offerors that are

unlikely to be viable competitors. Multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Under a multiphase acquisition, VA would seek limited information with vendors' first submissions, make one or more down-selects based on the initial information, and request full proposals only from the offerors remaining. This technique would ensure that only those firms most likely to receive awards would be required to expend the time and effort to prepare a full proposal. It would simplify and streamline the acquisition process and would save both vendors and the Government time and money.

Proposed paragraph (e) of section 873.111 would provide two additional alternative negotiation techniques for use by VA in acquiring commercial services or the use of medical equipment or space under this proposed rule. The first technique would allow the contracting officer to indicate to all offerors, or to one or more offerors, a price, contract term or condition, commercially available feature, or other requirement that the offeror or offerors will have to improve upon or meet, as appropriate, in order to remain competitive. The second technique would allow contracting officers to post prices received on offers electronically or otherwise, without disclosing the identity of the offerors, and allow offerors to revise their prices based on the posted information. These procedures are necessary to assist contracting officers in procuring the highest quality health-care services at best value prices.

Proposed section 873.112 addresses the selection of evaluation requirements that VA contracting officers must place in solicitations to be issued under this proposed rule. This proposed section would allow contracting officers the flexibility to fashion their own acquisition-specific evaluation scheme with whatever information they deem to be in the best interest of the Government. However, this proposed section retains the requirement from FAR that price or cost to the Government must be included in any evaluation and that past performance must be evaluated in acquisitions exceeding the simplified acquisition threshold (SAT) (currently \$100,000). As is currently set forth in the FAR, the contracting officer would be required, when not using past performance as an evaluation factor, to document the reasons why past performance is not being considered.

Proposed section 873.113 sets forth a new standard for exchanges with offerors in negotiated acquisitions. Currently, under FAR, any contact with a vendor about the vendor's proposal that goes to the substance of the offer constitutes "discussions." This causes a set of rules to go into effect, including a requirement that the Government hold "discussions" with every offeror, even if there is no need for discussions with those other offerors. Less important contact is referred to as "clarification" under existing FAR rules. Moreover, there is another category in the FAR called "communications" which goes to establishment of a competitive range. Under proposed section 873.113, the Government could have contact, called "exchanges," at any time with any vendor, as required. However, as with the current regulations, the Government could not improperly disclose information contained in another offeror's proposal (except as proposed at section 873.111(e), Alternative negotiation techniques).

Proposed section 873.114 sets forth a new concept of the "best value pool." This is the "pool" of offeror(s) that, after initial evaluation, have the most highly rated proposals with the greatest likelihood of award. Although this is similar in concept to the "competitive range" of the current rules, the difference is that the contracting officer may, in the solicitation, limit the best value pool to a specific number of offerors among which an efficient competition can be conducted. Under the existing rules of the FAR, the contracting officer may limit the number of proposals in the competitive range for purposes of efficiency, but that number is not defined and could be a matter of significant dispute. This proposed rule would expand on this FAR authority by defining, in advance in the solicitation, what constitutes an efficient solicitation. This is necessary to reduce the likelihood of disputes and to clarify how the authority to limit the number of proposals in the best value pool will be applied in a solicitation.

Proposed section 873.115 sets forth new procedures governing proposal revisions. Currently, under the FAR, once a "competitive range" has been developed, all offerors therein must be given a chance to revise their proposals. At the close of "discussions," all offerors remaining in the competition must be requested to submit a "best and final offer." Under this proposed section, contracting officers would be able to request proposal revisions as often as needed during the acquisition process. There would be no need for a requirement to request a "best and final

offer" from each and every offeror in every acquisition. The proposed section would require that proposal submissions be safeguarded against improper disclosures.

Proposed section 873.116 would provide guidance to contracting officers on source selection. FAR 15.308 contains specific requirements for documenting the source selection decision that would continue to apply to acquisitions under the proposed rule.

Proposed section 873.117 would provide additional guidance to contracting officers on contract award, over and above that contained in FAR at 15.504, specifically on the differences between awarding RFQs and requests for proposals.

FAR 15.505 currently requires the contracting officer to make every effort to provide a preaward debriefing if a written request for a debriefing is received from the offeror no later than 3 days after receipt by the offeror of notice of exclusion from the competitive range. If a preaward debriefing is delayed, the contracting officer must provide written documentation for the contract file on the rationale for delaying the debriefing. Proposed section 873.118 would make preaward debriefings optional on the part of the contracting officer. Preaward debriefings may be provided when doing so is determined by the contracting officer to be in the best interest of the Government. Postaward debriefings would still be provided as required by the FAR. This is necessary to simplify and streamline the acquisition process.

#### Miscellaneous Changes

Currently, VAAR 801.602-70(a)(4) provides that proposed contracts for the mutual use or exchange of use of "specialized medical resources" above specified dollar thresholds be submitted to VA Central Office for review. This proposed rule would revise the term "specialized medical resources" to "health-care resources" pursuant to 38 U.S.C. 8152. The review threshold levels specified in VAAR have been changed by class deviation in accordance with section 801.404. This document proposes to incorporate that class deviation into VAAR and to raise the review thresholds for health-care resources. This is necessary to allow streamlined and expedited processing of proposed contracts and to reduce the administrative burden on contracting officers.

This proposed rule would make minor editorial changes to sections 801.602-71 and 801.601-72 to correspond with the new language used in this proposed rule.

VAAR 806.302-5(b) currently provides that contracts for the mutual use or exchange of use of specialized medical resources to be acquired from health-care facilities are approved for other than full and open competition, but requires justification and approval in accordance with FAR 6.303 and VAAR 806.303. Section 301 of Public Law 104-262 revised 38 U.S.C. 8153(a)(3)(A), restricting and modifying this authority. Under this new authority, only those acquisitions of health-care resources consisting of commercial services, the use of medical equipment or space, or research, to be acquired from institutions affiliated with the Department in accordance with 38 U.S.C. 7302, from medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, are approved for other than full and open competition. In addition, 38 U.S.C. 8153 provides that justification and approval is not required for contracts with these entities. This rule proposes to revise paragraph (b) of section 806.302-5 to incorporate this new authority into VAAR.

Section 301 of Public Law 104-262 revised 38 U.S.C. 8153(a)(3)(B)(i) to provide that contracts for the acquisition of commercial services or the use of medical equipment or space, not procured from affiliated institutions or approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), may be procured without regard to any law or regulation that would otherwise require the use of competitive procedures, provided the procurement is conducted in accordance with the simplified procedures proposed in this rule. Public Law 104-262 revised 38 U.S.C. 8153(a)(3)(B)(ii) to require that such acquisitions permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation (as appropriate) and revised 38 U.S.C. 8153(a)(3)(D) to require that such acquisitions, if conducted on a sole source basis, must be justified and approved. This rule proposes to renumber current paragraph (c) of section 806.302-5 as paragraph (d) and to add new paragraph (c) to incorporate these new authorities into VAAR.

Currently, VAAR Part 812 addresses the acquisition of commercial services. This rule proposes to list the Part 852.273 clauses contained herein in section 812.302(g) for use in commercial service acquisitions, as authorized by

FAR 12.301(f). This action is necessary, and is proposed based on the reasons set forth below, to permit use of these Part 852.873 clauses in VA's commercial service acquisitions.

This rule proposes to add the VAAR clauses at section 852.207-70, Report of Employment Under Commercial Activities, and section 852.237-7, Indemnification and Medical Liability Insurance, as shown below in full text, to section 812.302(c) for use in VA commercial service solicitations, including contracts issued under the authority of 38 U.S.C. 8151-8153. These VAAR clauses at sections 852.207-70 and 852.237-7 are currently set forth in 48 CFR Part 852. VA acquisitions under the authority of 38 U.S.C. 8151-8153 are considered to be for commercial services and the clauses at sections 852.207-70 and 852.237-7 may be required for use in such acquisitions, where applicable. The VAAR clause at section 852.207-70, as set forth below, is necessary to ensure that contractors provide VA employees, who might be displaced as a result of a competitive acquisition, with the employee's right of first refusal to jobs created by that acquisition. The VAAR clause at section 852.237-7, as set forth below, is necessary to ensure that VA contractors providing nonpersonal health-care services have adequate medical liability insurance. This insurance is required to protect both VA and veterans from medical malpractice.

#### Report of Employment Under Commercial Activities (Oct 1988)

(a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.

(b) *Definitions.* (1) An "adversely affected Federal employee" is:

(i) Any permanent Federal employee who is assigned to the Government commercial activity, or (ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.

(2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award, including positions within a 50-mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.

(3) The "contract start date" is the first day of contractor performance.

(c) *Filling employment openings.* (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be

offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

(2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.

(d) *Contracting reporting requirements.* (1) No later than 5 working days after contract award the contractor shall furnish the contracting officer with the following:

(i) A list of employment openings including salaries and benefits, (ii) Sufficient job application forms for adversely affected Federal employees.

(2) By the contract start date, the contractor shall provide the contracting officer with the following:

(i) The names of adversely affected Federal employees offered an employment opening, (ii) The date the offer was made, (iii) A brief description of the position, (iv) The date of acceptance of the offer and the effective date of employment, (v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and (vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.

(3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

(e) *Information provided to the contractor.* (1) No later than 10 calendar days after the contract award, the contracting officer shall furnish the contractor a current list of adversely affected Federal employees exercising the right of first refusal, along with their completed job application forms.

(2) Between the contract award and start dates, the contracting officer shall inform the contractor of any reassignment or transfer of adversely affected employees to other Federal positions.

(3) For a period of up to 90 days after contract start date, the contracting officer will periodically provide the contractor with an updated listing of adversely affected Federal employees reflecting employees recently released from their competitive levels or separated as a result of the contract award.

(f) *Qualifications determination.* The contractor has a right under this clause to determine adequacy of the qualifications of adversely affected Federal employees for any employment openings. However, an adversely affected Federal employee who held a job in the Government commercial activity which directly corresponds to an employment opening shall be considered qualified for the job. Questions concerning the qualifications of adversely affected Federal employees for specific employment openings shall be referred to the contracting officer for determination. The contracting officer's determination shall be final and binding on all parties.

(g) *Relating to other statutes, regulations and employment policies.* The requirements

of this clause shall not modify or alter the contractor's responsibilities under statutes, regulations or other contract clauses pertaining to the hiring of veterans, minorities or handicapped persons.

(h) *Penalty for noncompliance.* Failure of the contractor to comply with any provision of the clause may be grounds for termination for default.  
(End of Clause)

#### **Indemnification and Medical Liability Insurance (Oct 1996)**

(a) It is expressly agreed and understood that this is a nonpersonal services contract, as defined in Federal Acquisition Regulation (FAR) 37.101, under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor's or its health-care providers' professional medical judgment, diagnosis, or specific medical treatments. The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions. The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence:

*[Contracting Officer insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests].*

However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract. The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph (a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer if it, or any of the health-care providers performing under this contract, change insurance providers during the performance period of this contract. The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements. These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract. The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph (a) of this clause.

(End of Clause)

VAAR 807.304-77 currently requires the use of the above clause at section 852.207-70, Report on employment under commercial activities, in all contracts that include the FAR clause at section 52.207-3, Right of First Refusal. This proposed rule would add this currently existing clause to the list of clauses in VAAR Part 812 for use in commercial item acquisitions. This is necessary to clarify that this currently existing clause is authorized for use in applicable commercial item solicitations.

VAAR 837.403 currently requires the use of the above clause at section 852.237-7, Indemnification and Medical Liability Insurance, in lieu of FAR clause 52.237-7, in solicitations and contracts for nonpersonal health-care services. This proposed rule would clarify at section 837.403 that this same VAAR clause must also be used in solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151-8153 and VAAR Part 873. This proposed rule would also add this currently existing clause to the list of clauses in VAAR Part 812 for use in commercial item acquisitions. This is necessary to clarify that this currently existing clause is authorized for use in applicable commercial item solicitations. The clause is necessary for use in VA solicitations and contracts to ensure that VA contractors providing nonpersonal health-care services have adequate medical liability insurance. This insurance is required to protect both VA and veterans from medical malpractice.

VAAR Part 852 does not currently contain any provisions specifically relating to the acquisition of commercial services under the simplified acquisition authority of 38 U.S.C. 8151-8153. This rule proposed to add four

provisions to the VAAR, as set forth herein in Part 852. The following is an explanation of these proposed provisions.

The proposed provision at section 852.273–70, Late offers, would replace paragraph (f) of FAR provision 52.212–1 in acquisitions of commercial services or the use of medical equipment or space conducted in accordance with VAAR Part 873. Paragraph (f) of FAR provision 52.212–1 currently provides that offers or modifications of offers received after the exact time specified in the solicitation for receipt of offers will not be considered. VAAR provision 852.273–70 proposes to allow consideration of quotations, proposals, or modifications of proposals received after the time set forth in the request for quotations or request for proposals at the discretion of the contracting officer, if determined to be in the best interest of the Government. This will ensure that VA will be able to accept the best offer submitted on a solicitation, even if that offer is received after the time set forth in the solicitation.

The provision at section 852.273–71, Alternative negotiation techniques, proposes to allow the use of the alternative negotiation techniques set forth at section 873.111(e). The techniques listed therein include (1) allowing the contracting officer to indicate to an offeror how the offeror must improve its offer in order to be considered for award and (2) allowing the contracting officer to post prices and permit revisions of offers based on that information. We believe these alternative negotiation techniques will allow VA to conduct acquisitions on a basis more in line with commercial practices and will result in the acquisition of improved services at reduced prices. Neither FAR nor VAAR currently contains provisions expressly allowing alternative negotiation techniques.

The proposed provision at section 852.273–72, Alternative evaluation, would implement the provision at section 852.273–71, Alternative negotiation techniques, by advising offerors how prices would be posted and by providing guidance to offerors on how to submit offers. In addition, this proposed provision would advise offerors on how options would be evaluated, i.e., by adding the total price of all options to the total price for the basic requirement. It would also advise offerors that the Government would not be obligated to exercise the options. The “options” paragraph is included in this proposed provision because this provision might be used alone, without a separate “options” provision.

The proposed provision at section 852.273–73, Evaluation—health-care resources, would replace FAR provision 52.212–2 in acquisitions for commercial services conducted in accordance with VAAR Part 873. FAR provision 52.212–2 provides guidance to offerors on what factors the Government will use to evaluate offers and on how those factors are weighted. Under proposed VAAR 873, VA would not be required to use factors, as described in the FAR, to evaluate offers. Rather, VA would include “evaluation information” in the solicitation stating how offers will be evaluated. In addition, VA would not be required to state how the evaluation information is weighted, but would be required to state the relative importance of the evaluation information. This proposed provision is written to replace FAR 52.212–2 with these authorities in mind. Also, paragraph (c) has been drafted to clarify that notice of acceptance of an offer will create a binding contract if the solicitation is a request for proposals. If the solicitation is a request for quotations, that would not be the case, as notice of acceptance would not create a binding contract.

The provision at section 852.273–74, Award without exchanges, is proposed to be added to VAAR to advise offerors that VA intends to evaluate proposals and award a contract without exchanges with offerors. This provision is necessary in order to avoid any misunderstanding regarding award and to help ensure that offerors provide their best prices and terms with their initial offer.

#### Consideration of Public Comments

The withdrawn proposed rule included a certification under the Regulatory Flexibility Act that it would not have a significant economic impact on a substantial number of small entities. This certification was based on the finding that costs to comply with the provisions of the proposed rule would be minimal. The Office of Advocacy (Advocacy) of the Small Business Administration (SBA) commented that, instead of the certification, we should have prepared an initial regulatory flexibility analysis. Advocacy opposed the degree of discretion that this rule would afford to contracting officers in seeking competition and evaluating and selecting awardees. Advocacy asserted that the proposed rule would alter the process of “full and open competition” and also asserted that it would sacrifice competition at the expense of creating false efficiencies and short-term savings. Advocacy further asserted that “[o]nly market-based competition can prevent monopoly practices and the

concentration of federal dollars in the hands of a few large industry giants.” More specifically, Advocacy asserted that the proposed rule limits competition, provides the contracting officer with virtually unilateral authority to accept proposals, even when they are submitted after the closing date of the solicitation, and provides many other non-competitive changes.

The Executive Branch has worked closely with Congress to improve the Government’s acquisition practices and productivity. These reforms allow agencies to structure their contracting operations in a way that makes sense and provides increased flexibility for contracting officials to make and implement good business decisions. For all purchases under \$100,000 and, on a test basis until January 1, 2002, for purchases of commercial items up to \$5 million, contracting officers are authorized to use simplified procedures. These authorities give contracting officials flexibility to emulate commercial practices and use the procedures they think will work best in the context of the specific products and services, market conditions, and other circumstances involved for using competition to obtain value. For large purchases, the revisions to FAR Part 15 help contracting officers, within current statutory constraints, to better focus the Government’s resources on obtaining the best value.

The provisions of this proposed rule are designed to build on these acquisition reforms in a manner that, as envisioned by Pub. L. 104–262, strengthen the efficiency and effectiveness by which VA acquires health care resources on behalf of America’s veterans. The rule would require contracting officers to seek competition to the maximum extent practicable. In accomplishing this end, the rule would not sacrifice competition; nor would it give contracting officers unfettered discretion in evaluating sources and making awards.

With respect to soliciting sources, for acquisitions over \$100,000, the proposed rule would require acquisitions to be publicly announced. Contracting officers would be afforded greater flexibility in shaping how notice is published. This flexibility is not expected to be used to limit competition. Rather, it is intended to enable contracting officers to select the means of notice that will maximize effective dissemination of information to interested sources. While contracting officers would have the option of not publicizing contracting opportunities

below \$100,000, they would still be expected to solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure the purchase is advantageous to the Government.

With respect to the evaluation of sources and awarding of contracts, the proposed rule would simplify the procedures associated with the conduct of negotiations, especially with respect to that which would otherwise be required under FAR Part 15. However, key source selection decision principles would remain unchanged. Among other things, contracting officers would be required to: (1) Make source selection decisions in a manner consistent with the solicitation (which would provide evaluation information to interested offerors); (2) treat prospective contractors fairly and impartially; (3) determine that prices are fair and

reasonable; and (4) document their decisions.

Of the approximately 6,000 commercial service acquisitions valued in excess of \$25,000 awarded annually in Fiscal Years (FY) 1998 and 1999 that might have been covered by this proposed rule, only a total of three (two in FY 1998 and one in FY 1999) of those acquisitions were in excess of \$5 million. Less than 2,000 fell between \$100,000 and \$5 million. Thus, where the differences between the proposed rule and the FAR are greatest (i.e., for acquisitions over \$5 million), the number of potentially affected entities is minimal. While there are more entities seeking to make offers in the lower dollar range, the differences between the FAR and the proposed rule are considerably less extensive in that range.

In toto, the proposed rule should ensure that competition is used effectively, as authorized and envisioned by Public Law 104-262, and in a manner that promotes strong participation by contractors small and large. As discussed in greater detail below, VA does not believe that the ways in which the proposed rule differs from the FAR would negatively impact competition. In addition, VA believes that the proposed rule would not negatively impact small business participation and intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this rule and the impact on VA's socioeconomic programs.

For acquisitions exceeding \$100,000, the proposed rule differs from the FAR in the following major areas:

FAR requirement	Proposed rule requirement
a. 8.001: Four levels of priority for acquiring services .....	873.103: Only one priority source.
b. 6.101: Prior to 1/1/2002, for negotiated commercial acquisitions exceeding \$5 million, promote full and open competition (i.e., use FAR Part 15).	873.104(c): Promote competition to the maximum extent practicable (i.e., use simplified procedures similar to FAR Part 13).
c. 6.101: After 1/1/2002, for negotiated commercial acquisitions exceeding \$100,000, promote full and open competition (i.e., use FAR Part 15).	873.104(c): Promote competition to the maximum extent practicable (i.e., use simplified procedures similar to FAR Part 13).
d. 19.502-2(b): Set aside for small business if two or more. No waiver provisions.	873.107(a): Set aside for small business if two or more. May be waived by the head of the contracting activity.
e. 5.201: Transmit notice of acquisitions exceeding \$25,000 to the Governmentwide point of entry (GPE).	873.108(a): Publicly announce acquisitions exceeding \$100,000 using a medium designed to obtain competition to the maximum extent practicable.
f. 6.302-1 & 5.101: Synopsise proposed acquisitions where only one source can satisfy agency needs in the GPE.	873.108(b): Acquisitions from an affiliate or acquisitions of hospital care, medical services, and other health-care services from a sole source are exempt from synopsis in the GPE.
g. 15.208 and 52.212-1(f): Late offers will not be considered. Late quotes not addressed.	873.109(d): Late offers and late quotes may be considered if in the best interest of the Government.
h. 13.5: Prior to 1/1/2002, use of the simplified procedures of FAR Part 13 is limited to acquisitions of \$5 million or less.	873.111(a)(2): Use of simplified procedures similar to FAR Part 13 may be used regardless of the dollar value of the acquisition. No expiration date for this authority.
i. 13.5: After 1/1/2002, use of the simplified procedures of FAR Part 13 is limited to acquisitions of \$100,000 or less.	873.111(a)(2): Use of simplified procedures similar to FAR Part 13 may be used regardless of the dollar value of the acquisition.
j. 15.202: Allows issuance of an advisory multi-step solicitation. All initial offerors may still submit full offers, even if advised that their offers are unlikely to be viable.	873.111(d): Allows multiphase solicitations and rejection of offerors whose initial offers indicate that they are unlikely to be viable contenders for award.
k. 15.306(d): May bargain with offerors. Extensive limits on what can be discussed when.	873.111(e)(1): Expands on what can be discussed and on when discussions can be held. Allows the contracting officer to indicate a price or feature that offeror must meet or improve upon to remain competitive.
l. No comparable FAR provision .....	873.111(e)(2): Allows public posting of offer prices and subsequent submission of revised offers.
m. 15.304: Provides detailed requirements for evaluation factors .....	873.112(a): Provides agency acq. officials with broad discretion in establishing criteria, factors, and other evaluation information (except that price or cost must be evaluated in all acquisitions and past performance evaluated in acquisitions over the SAT).
n. 15.304(d): All factors and subfactors affecting award and their relative importance shall be stated.	873.112(d): The relative importance of any evaluation information must be stated.
o. 15.201/15.306: Detailed guidance on exchanges of information with industry, categorized as pre-receipt of proposals, post-receipt but prior to establishing a competitive range, and post-establishment of a competitive range. Must conduct discussions with all offerors in the competitive range.	873.113: Broad authority for the contracting officer to conduct exchanges with industry throughout the acquisition process. Need not conduct exchanges with all offerors.
p. 15.306(c): Contracting officer must establish a competitive range if discussions are to be held.	873.114: Contracting officer may establish a best value pool.
q. 15.306(c)(2): Contracting officer may limit number of proposals to greatest number that will permit efficient competition.	873.114(b): Contracting officer may state in the solicitation a maximum number of offerors that will be considered in the best value pool.

FAR requirement	Proposed rule requirement
r. 15.307: Each offeror in the competitive range shall be asked to submit a final proposal revision. Contracting officer shall establish a common cutoff date for all final proposal revisions.	873.115: Contracting officer may request revisions as often as needed. Contracting officer is not required to establish a common cutoff date for all offerors.
s. 15.505: Offerors excluded from the competitive range may request a debriefing before award. Contracting officer may delay the debriefing if in the best interest of the Government. Contracting officer must document the reasons for the delay.	873.118: Offerors excluded from the competition under an RFP may request a debriefing. Contracting officer may provide a pre-award debriefing if determined to be in the best interest of the Government. No documentation is required if a pre-award debriefing is not provided.

The following is a discussion of the above differences and their impact on competition:

a. As noted in the **SUPPLEMENTARY INFORMATION** above, FAR 8.001(a)(2) sets forth four levels of priority for the acquisition of services. These are, in descending order of priority: (i) Services available from the Committee for Purchase from People who are Blind or Severely Disabled; (ii) mandatory Federal Supply Schedules (FSS); (iii) optional use FSS; and (iv) Federal Prison Industries, Inc., or commercial sources (including educational and non-profit institutions). Proposed section 873.103 would exempt VA from the provisions of FAR 8.001(a)(2) regarding the lowest three levels of priority. For VA, there are no longer any mandatory use FSS (the highest level of priority of the three levels proposed for elimination), so elimination of this priority level has no impact. As to the second level, optional use FSS, even without the priority levels, VA contracting officers would still be able to place delivery orders against optional use FSS contracts in accordance with FAR 8.404. However, they would not be required to do so by the list of priority sources. Under the proposed rule, it would be at the contracting officer's option whether or not to issue a delivery order against an optional use FSS contract or to pursue another contracting tool. If a contracting officer issued a solicitation for services instead of placing a delivery order with an optional use FSS contractor, optional use FSS contractors, Federal Prison Industries, Inc., and commercial sources would have an opportunity to compete. This provision of the proposed rule may provide firms, including small businesses, which chose not to participate in the FSS program with additional opportunities to compete. The decision on whether or not to use the FSS program would not affect whether award was made to a small business under the optional use FSS program or to a small business under a solicitation. We believe that this provision would result in minimal, if any, impact on small business and little change in the number of awards to small

business. However, it does have the potential to increase, rather than decrease, competition.

b. Until January 1, 2002, the FAR allows use of the simplified provisions of FAR Part 13 for the acquisition of commercial services not to exceed \$5 million in value. For negotiated acquisitions exceeding \$5 million, the FAR requires use of the more formal negotiation procedures of FAR Part 15. The proposed rule differs from the FAR by allowing use of simplified procedures similar to those in FAR Part 13 for all acquisitions. However, competition would still be required under the proposed rule and all offers received would have to be considered (see 873.104(c)). The negotiation method used for the acquisition, whether the procedures of the FAR or the more simplified procedures of this proposed rule, would not, in our opinion, have an impact on competition or on whether or not award would be made to a small business.

c. The test provisions of FAR 13.5 are scheduled to expire on January 1, 2002. If those test provisions are not renewed or extended, after that date, all negotiated commercial acquisitions conducted under the FAR exceeding \$100,000 will have to be conducted using the formal procedures of FAR Part 15. However, this proposed rule would allow VA to continue to use simplified procedures to conduct such acquisitions. Again, as noted in "b." immediately above, competition would still be required under the proposed rule. As discussed in paragraph "e." below, the proposed rule would require public announcement of proposed contract actions using methods that maximize effective dissemination and would require that all offers received be considered. The proposed rule would allow contracting officers to use simplified negotiation procedures rather than the more formal procedures of FAR Part 15. The method of negotiation used should not negatively impact competition or affect whether or not award would be made to a small business.

d. The provisions of section 873.107 regarding the waiver of small business

set-asides are addressed in the Initial Regulatory Flexibility Analysis.

e. Although the proposed rule differs from the FAR in not requiring publication of contracting opportunities in the Governmentwide point of entry (GPE), the proposed rule (at 873.108) would require contracting officers to publicly announce proposed procurements over \$100,000 using those means necessary to ensure maximum effective dissemination of information on the proposed acquisition. Thus, for example, if the contracting officer determined that the GPE was the most effective tool for advising interested offerors of an opportunity over \$100,000, contracting officers would be expected to use the GPE. For acquisitions under \$100,000, contracting officers would be expected to solicit a sufficient number of sources to promote competition to the maximum extent practicable. These changes should not reduce competition but rather improve the efficiency by which VA solicits interested sources. Additional discussion of 873.108 can be found in the Initial Regulatory Flexibility Analysis.

f. The provisions of section 873.108 regarding announcing acquisitions in the GPE are addressed in the Initial Regulatory Flexibility Analysis.

g. The issue regarding acceptance of late offers is addressed below.

h. and i. The use of simplified procedures similar to those of FAR Part 13 for commercial service acquisitions, versus use of the more formal procedures of FAR Part 15, is addressed in paragraph b. above.

j. The FAR allows the contracting officer to issue an advisory multi-step solicitation. Initial offers are submitted containing limited information. All initial offerors can proceed to submit full offers, even if one or more of those offerors are advised that, based on their initial offers, their offers are unlikely to be viable. This proposed rule contains similar provisions, with the exception that, under this proposed rule, offerors whose initial offers indicate that they are unlikely to be viable competitors could be excluded from further participation in the acquisition. This

proposed rule would be beneficial to offerors by relieving them of any burden to prepare final offers when those offers are unlikely to receive award and would be beneficial to the Government by eliminating a requirement to evaluate full proposals from firms that are unlikely to receive award. The proposed rule would save time and effort on both the offeror's and the Government's part. Although the procedure would authorize mandatory "downselects," the impact on competition should be minimal. While downselects under the multi-step process authorized by FAR Part 15 are advisory only, we believe that, in most instances, sources advised that they are unlikely to receive award will not compete. The proposed rule offers the efficiency of being able to exclude the less than highly competitive offeror that occasionally may wish to pursue its offer under the Part 15 process (but would not add significantly to the overall competitive pressures of the source selection, given its comparatively weaker competitive position).

k. The FAR allows contracting officers to bargain with offerors, but places limits on what can be discussed when. This proposed rule would expand on when discussions (called "exchanges" in the proposed rule) could take place and would expand on what could be discussed. The intent of the proposed rule is to ensure that there is a complete understanding between the Government and the offerors prior to making an award decision. In addition, the proposed rule would allow the contracting officer to indicate a price, contract term or condition, feature or requirement the offeror would have to meet or improve upon in order to stay competitive. These provisions would help ensure VA acquires the best value services available but should have no impact on the number of offers received and thus no impact on the amount of competition.

l. The proposed rule would allow the contracting officer to publicly post all prices received on an offer and permit offerors to subsequently revise their offers. There are no similar provisions in the FAR. Since this provision would apply equally to all offerors and since it would apply only after offers had been submitted, we do not expect it to have a negative impact on the number of offers received or to thereby limit competition.

m. The FAR specifies requirements for evaluation factors. This proposed rule would provide broad discretion to agency acquisition officials to establish evaluation information. How the factors/information would be structured

and what factors/information the Government would use to evaluate offers should have little, if any, impact on competition. If a firm is capable of, and interested in, providing the service, the firm would submit an offer based on the factors/information provided. We do not expect any reduction in the number of offers received based on this provision.

n. The FAR requires that all evaluation factors and subfactors and their relative importance be stated in the solicitation. This proposed rule would require that the evaluation information be stated in the solicitation and that the relative importance of those evaluation information items be stated. Under the proposed rule, the contracting officer would have broad discretion to determine what to include as evaluation information, but this provision should have no effect on the amount of competition expected under such solicitations. There is no reason to suspect that fewer firms would submit offers because of this provision.

o. The FAR contains guidance on, and requirements for, conducting discussions with vendors. If discussions are held, the FAR requires that the contracting officer hold discussions with all offerors, even if there is nothing to discuss. The proposed rule at section 873.113 would simplify the negotiation process by providing the contracting officer with broad discretion on what to discuss and on when and how those discussions are to be conducted. In addition, the proposed rule provides that the contracting officer need hold discussions only if there is something to discuss. The intent of the proposed rule is to simplify the negotiation process while ensuring that there is a firm understanding between the Government and the offerors prior to making an award decision. We believe that these provisions would have no effect on the number of firms that submit offers on any particular solicitation and that these provisions are neutral as to whether or not award is made to a small business.

p. The FAR requires the contracting officer to establish a competitive range if discussions are to be held, while the proposed rule at section 873.114 would provide that the establishment of a best value pool (similar to a competitive range) would be optional. This provision would have no effect on the number of firms submitting offers on any particular solicitation. If a best value pool is not established, then all offers received would be considered to be in contention for award.

q. The FAR currently allows the contracting officer to limit the number of firms in the competitive range to the

greatest number that will permit an efficient competition. The proposed rule at section 873.114 would provide a similar method for limiting the number of firms in the competitive range, allowing the contracting officer to set, in advance in the solicitation, a maximum for the number of firms that would be considered in the best value pool. No dollar threshold is proposed for use of this authority. All firms submitting offers would be evaluated, but only the top 3 (or whatever number set by the contracting officer) would be included in the best value pool. Further negotiations would then be conducted with those top 3 firms. Again, we believe this provision would not have an impact on whether or not a firm decides to submit an offer or on whether or not a small firm versus a large firm was selected for inclusion in the best value pool.

r. The FAR requires that each offeror in the competitive range be requested to submit a final proposal revision and that a common cut-of date be established for receipt of those final proposal revisions. This proposed rule at section 873.115 would allow the contracting officer to hold discussions (exchanges) with offerors as often as needed, but if there was no need to hold discussions with a firm that had submitted an outstanding offer, there would be no requirement to do so. Offerors could submit revised offers at any time. Each firm with whom exchanges were to be held would be provided a time period during which it may submit a revised offer. Award would be made after the last time period had expired. Again, these procedures would all be applicable only after initial offers had been received. We believe the presence or lack of these procedures would have no impact on whether a firm decides to submit an offer or on whether a small business, versus a large business, received award.

s. The FAR requires the contracting officer to make every effort to provide a pre-award debriefing to offerors excluded from the competition, if so requested. The debriefing may be delayed if the delay is in the best interest of the Government. The reasons for the delay must be documented in writing. This proposed rule at section 873.118 would allow the contracting officer more discretion in deciding whether or not to provide a pre-award debriefing and would remove the requirement for written justification if the debriefing is delayed. Post award debriefings would still be required, as provided in the FAR. This provision would simplify and expedite the award process. We believe the presence or lack of this provision would have little to no

effect on whether a firm decided to submit a bid on any particular solicitation or on whether a small business received award. Accordingly, we believe this provision should have little effect on competition.

Based on the above, it is our belief that the proposed rule would not limit competition.

Advocacy contended that the original proposed rule's provisions allowing the consideration of offers received after the closing date of a solicitation would negatively impact competition. No changes to this new proposed rule have been made based on this comment. Current General Accounting Office (GAO) protest decisions permit an agency under certain circumstances to accept a late proposal by extending the due date for receipt of proposals. *Ivey Mechanical Co.*, Comp. Gen. Dec. B-272764, 96-2 CPD ¶ 83. With regard to quotes, current GAO protest decisions state that if a request for quotation (RFQ) does not contain a late quotations clause, but merely requests quotations by a certain date, that date is not considered a firm date for the receipt of quotations. In such a case, the agency is not precluded from considering a quotation received after that date, provided that no substantial activity has transpired in evaluating quotes and the other quoters would not be prejudiced. *Instruments & Controls Serv. Co.*, 65 Comp. Gen. 685 (1986). Since offers and quotes are not publicly disclosed, vendors are not prejudiced by consideration of offers or quotes received late. Accordingly, this proposed rule concerning acceptance of late quotations or proposals essentially restates existing Government contract law and procedure. In our view, this provision would be neutral regarding impacts on small business versus large business. There is no reason to believe that late quotations or proposals would more likely be submitted by large businesses than by small businesses.

Several comments were received from the Small Business Administration (SBA).

SBA questioned whether the term "sole source," as used in section 873.104, accurately reflects a common understanding of the term "sole source" as there being only one available source. No changes are made to this revised proposed rule based on this comment. In our view, the term "sole source," as used in this revised proposed rule, is consistent with the definition of a "sole source acquisition" as provided in FAR 6.003, meaning that negotiations are conducted with only one source. Under the FAR definition, an acquisition would be a "sole source acquisition" if

negotiations were conducted with only one source, as would be the case for a VA acquisition from an affiliated institution, even if there were other sources that could also provide the service.

Sections 873.104(c) and 873.108(a) include the term "as appropriate." SBA opposed the inclusion of this term in the rule based on an assertion that it does not appear in 38 U.S.C. 8153(a)(3)(B)(ii). No changes are made to this revised proposed rule based on this comment. The cited statutory provisions were amended by section 402(e) of Public Law 105-114 to include this term.

SBA recommended that VA develop guidelines to define market research in section 873.107. We agree with the comment and made a change to section 807.107. The FAR already includes guidelines to define market research at section 10.002(b). The applicable provisions of section 10.002(b) would be useful in conducting market research for commercial services. Therefore, we have incorporated the provisions of FAR 10.002(b) into the guidance on market research contained in this revised proposed rule.

SBA suggested that we revise section 873.107 to require the head of the contracting activity to submit copies of approved waivers of small business set asides to the Director, VA Office of Small and Disadvantaged Business Utilization, and to the Assistant Administrator, SBA Office of Prime Contracting. No change was made to this revised proposed rule based on this comment. We believe that if an inter-governmental agreement of this nature were to be established, it would not need to be included in regulations.

SBA raised concerns with the provision at section 873.108(c) making public announcement optional for procurement opportunities below the SAT. No changes were made to this revised proposed rule based on this comment. Even though public announcements are not required by the rule, contracting officers are expected to solicit a sufficient number of sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors. Public Law 104-262 grants VA authority to "permit all responsible sources, *as appropriate*, to submit a bid, proposal, or quotation \* \* \*." (emphasis added) and to "prescribe simplified procedures for the procurement of health-care resources." As provided in the proposed rule, VA contracting officers are required to

obtain competition to the maximum extent practicable. The "as appropriate" provision of Public Law 104-262 permits VA to determine what is appropriate regarding announcing the solicitations valued below the SAT. Further, Public Law 104-262 states that acquisitions conducted in accordance with these simplified procedures "may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures \* \* \*." Accordingly, the provisions of section 873.108(c) are consistent with statute.

SBA suggested that VA select one method to publicize its procurement opportunities. No change was made to this revised proposed rule based on this comment. Changing technology makes selection of one alternative too limiting. The intent of this proposed rule is to maximize the options available for public announcements and to maximize the effective distribution of information on VA solicitations. Contracting officers should be free to select the methods for announcing acquisitions that are most appropriate for the type of acquisition being conducted.

SBA objected to the provisions at section 873.111(a)(2) of the original proposed rule which provide that, for acquisitions below the simplified acquisition threshold (\$100,000), two quotations will be considered as meeting the requirement for competition to the maximum extent practicable. Based on subsequent discussions held with a representative from the SBA Office of Advocacy, changes have been made to this section. The provision providing for two quotations has been removed. The requirements of FAR 13.104 would thus apply regarding obtaining competition to the maximum extent practicable.

SBA pointed out that section 873.118, Debriefings, only addressed debriefings for multiphase or best value pool acquisitions, and did not address debriefings for requests for quotations (RFQs), sealed bids, or negotiated acquisitions that are not multiphase or best value pools. In this regard, SBA suggested that debriefings be required either after an offeror is eliminated from the competition or after contract award. Based on this comment, changes are made to this proposed rule. The FAR does not require debriefings for RFQs or sealed bids. In addition, while the FAR at section 15.505(b) requires that the contracting officer "make every effort to debrief an unsuccessful offeror as soon as practicable," it allows the contracting officer to refuse the request for a pre-award debriefing if providing the debriefing is not in the Government's

best interest. The reasons for the denial must be documented in the contract file. The intent of this proposed rule is to simply and expedite the award process. Towards this end, the proposed rule would remove some of the administrative burden imposed by the FAR, eliminate the documentation requirements of the FAR, and make pre-award debriefings clearly optional. Making pre-award debriefings optional would help expedite the award process. Post-award debriefings would still be required for any firm requesting a debriefing as currently provided in the FAR. Where this proposed rule is silent, existing FAR requirements would apply. Thus, for RFQs, the "request for information" requirements of FAR 13.106-3(d) would still apply. For sealed bids, the "information to bidders" requirements of FAR 14.409 would still apply. Based on the comment, the references to multiphase acquisitions and best value pools have been replaced with a reference to a "request for proposals (RFP)" to clarify that this section would apply to all RFPs conducted under this authority.

A VA contracting officer objected to the proposed regulatory requirement of section 873.105 that the contracting officer form a team for each acquisition of commercial services or the use of medical equipment or space conducted under the authority of 38 U.S.C. 8153. We have made changes to this revised proposed rule based on this comment. Prior to the enactment of Public Law 104-262, 38 U.S.C. 8153 only authorized VA to acquire specialized medical services. Public Law 104-262 expanded the types of services that can be acquired under the authority of 38 U.S.C. 8153 to include any health-care resource that is a commercial service or the use of medical equipment or space. These proposed simplified procedures have been drafted to cover this expanded authority. However, we expect these simplified acquisition procedures to continue to be used primarily for the acquisition of medical services. Such acquisitions are usually highly complex and of significant dollar value. It is critical to the success of such acquisitions that appropriate staff at the medical center fully cooperate with the contracting officer in the development of specifications, the conduct of the acquisition, as appropriate, and in the administration of the contract. We believe this can best be accomplished by the formation of a team. The composition of the team is to be determined by the contracting officer and the team would not need to be the same for every acquisition. The team

could consist of as few as two people, the requestor and the contracting officer. While we feel a team is necessary for complex, high dollar value acquisitions, we agree with the commenter that a team may not be necessary for simple acquisitions of low dollar value. Therefore, based on the comment, we have proposed to set a dollar threshold of \$100,000 (the SAT) for the requirement to form a team.

One commenter expressed concern that, if adopted, the rule would effectively limit competition and prevent textile rental companies from obtaining VA laundry service contracts. No changes are made to this revised proposed rule based on this comment. We do not believe this revised proposed rule would have an effect on whether textile rental companies obtain VA laundry service contracts. We believe the pertinent issue raised by the commenter concerns VA decisions on whether or not to compete laundry services. Those determinations are beyond the scope of and not addressed in the proposed rule.

One commenter objected to the provisions of the proposed rule exempting VA from provisions of FAR and VAAR. No changes are made to this revised proposed rule based on this comment. Public Law 104-262 specifically grants VA authority to make such exemptions.

One commenter alleged that the rule attempts to waive the Economy Act and allow VA to buy commercial services from other Government agencies with few restrictions. No changes are made to this revised proposed rule based on this comment. Acquisitions under the Economy Act and FAR Subpart 17.5 are not addressed in this proposed rule. In addition, this proposed rule does not cover acquisitions of health-care resources from the Department of Defense (DoD). Under 38 U.S.C. 8111, VA has specific authority to acquire health-care resources from DoD. This proposed rule, however, does cover acquisitions from other Federal agencies. The statute upon which this proposed rule is based, 38 U.S.C. 8153, provides that VA may make arrangements by contract or other form of agreement for the mutual use or exchange of use of health-care resources with "any health-care provider, or other entity or individual." These terms include other Federal agencies. Thus, the statute specifically authorizes VA to acquire commercial services or the use of medical equipment or space from other Federal agencies. However, at this time, we have no reason to believe that other Federal agencies will submit bids, proposals, or quotations in response to

VA solicitations for commercial services or the use of medical equipment or space.

One commenter expressed concern regarding the vague language used in the proposed rule and the potential negative affects thereof on competition and suggested that the final rule define and give examples for the terms "best interest of the Government" and "contracting officer's discretion." No changes are made to this revised proposed rule based on this comment. Circumstances vary widely and it would be difficult, if not impossible, to describe all circumstances where a decision is in the "best interest of the Government" or to define whether decisions subject to the "contracting officer's discretion" are either acceptable or not acceptable.

One commenter requested that VA provide examples of how it intends to define the term "reasonable," as used in the November 9, 1998, **SUPPLEMENTARY INFORMATION** portion of the **Federal Register** proposed rule notice. No changes are made to this revised proposed rule based on this comment. This term, as used in the **SUPPLEMENTARY INFORMATION**, was not a part of the regulation. Whether or not an action is "reasonable" depends on the circumstances. Defining what is reasonable in one set of circumstances might restrict action in another set of circumstances, even when the proposed action under that new set of circumstances could also be considered "reasonable." This notwithstanding, contracting officers must conduct business with integrity, fairness, and openness. Under the proposed rule, contracting officers would remain subject to FAR 1.102-2(c)(3), which states that all contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same.

Two commenters addressed the provisions of the proposed rule at sections 801.602-70 and 801.602-71 regarding technical and legal review requirements for VA sales agreements. Changes are made to this revised proposed rule based on these comments. This proposed rule is not intended to apply to the sale of VA services. Therefore, provisions regarding technical and legal review of proposed VA sales agreements have been removed.

One commenter requested clarification of section 806.302-5 regarding the legal definition of the term "affiliated institution." No changes are made to this revised proposed rule based on this comment. Pursuant to 38 U.S.C. 7302, VA may have affiliations

with schools of medicine, osteopathy, dentistry, nursing, pharmacy, optometry, podiatry, public health, or allied health professions, other institutions of higher learning, medical centers, academic health centers, hospitals, and such other public or nonprofit agencies, institutions, or organizations as the Secretary of Veterans Affairs considers appropriate.

One commenter expressed concern with the provisions of the proposed rule exempting VA from the automatic small business set-aside provisions of the FAR for acquisitions between \$2,500 and \$100,000, from the FAR notification requirements for announcing commercial solicitations in the Commerce Business Daily (CBD), and from other FAR acquisition processes and techniques. The commenter expressed concern that the proposed rule gives contracting officers too much discretion. Changes were made to the exemption from the automatic set-aside provisions of FAR 13.003(b)(1) and 19.502-2(a) contained in the November 9, 1998, proposed rule based on these comments.

We examined the exemption to the automatic set-aside of acquisitions between \$2,500 and \$100,000 for small business and determined that elimination of this exemption would not impact the ability of VA to conduct simplified acquisitions. Accordingly, we have removed that exemption from this revised proposed rule.

Regarding a comment on the broad discretion given to contracting officers, that discretion is consistent with the reforms of the Federal Acquisition Streamlining Act and the Clinger-Cohen Act and other acquisition reform efforts. It provides contracting officers with authority to conduct acquisitions in a manner that is in the best interest of the Government. No changes were made to this revised proposed rule based on this comment.

One commenter expressed concern regarding the statement contained in the proposed rule that VA is exempt from laws that require the use of competitive procedures. No changes were made to this revised proposed rule based on this comment. VA has statutory authority for this exemption. 38 U.S.C. 8153 specifically states that “[I]f the health-care resource required is a commercial service, the use of medical equipment or space, and is not to be acquired from an entity described in subparagraph (A), any procurement of the resource may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring the resource, but only if the procurement is conducted in

accordance with the simplified procedures prescribed pursuant to clause (ii).” 38 U.S.C. 8153 goes on to require, for acquisitions not conducted with affiliates, that the simplified procedures permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation and that acquisitions conducted on a sole source basis be justified in writing. This proposed rule sets forth those simplified procedures. The commenter went on to state a belief that Congress intended that VA be covered under the newly enacted Federal Activities Inventory Reform (FAIR) Act and stated an expectation that VA will comply with all of the FAIR Act provisions. No changes are made to this revised proposed rule based on this comment. Issues concerning the FAIR Act are outside of the scope of and not addressed by this proposed rule.

One comment from a VA contracting officer requested clarification of the distinction between the terms “weighted,” as used in the **SUPPLEMENTARY INFORMATION** portion of the proposed rule notice of November 9, 1998, and “relative importance,” as used in section 873.112(d). The proposed rule at section 873.112(d) states that the relative importance of any evaluation information included in a solicitation shall be set forth therein. The **SUPPLEMENTARY INFORMATION** portion of the proposed rule of November 9, 1998, merely reflected that, consistent with FAR 15.304(d), the elements that are distinguished by “relative importance” are not required to be weighted.

In addition to the changes noted above, several other changes were made to the proposed rule document published in the **Federal Register** on November 9, 1998, as follows:

- A statement exempting architect-engineer (A/E) services from the rule has been added to section 873.102. A/E services are currently acquired in accordance with 40 U.S.C. 541-544. It is not the intent of this proposed rule to change the way VHA acquires A/E services or to deviate from the requirements of 40 U.S.C. 541-544.

- Additional provisions have been added to sections 873.105 and 873.112 regarding acquisition planning and the evaluation of past performance. These are important aspects of the acquisition process and warrant additional emphasis in the rule.

- A provision has been added to section 873.107 to clarify that the section only applies to acquisitions in excess of the micro-purchase threshold. The FAR does not require set-aside of acquisitions below the micro-purchase

threshold and this section was not intended to be more restrictive than the FAR.

- Based on comments received from SBA, the number of days provided in 873.107(b) for SBA to notify the contracting officer of their intent to appeal has been changed from 1 day to 2 days to correspond with the number of days provided in the FAR.

- A provision has been added to section 873.108(b) to clarify that the exemption to announcing sole source acquisitions in the GPE would also apply to sole source mutual use or exchange of use contracts. To the extent that VA would be acquiring services under such contracts, those contracts are “acquisitions,” as originally covered by this paragraph.

- A provision has been added to section 873.117 to clarify that it is at the contracting officer’s option, rather than a requirement, to establish a binding contract when a request for quotation process was used to obtain quotes. As originally proposed in the November 9, 1998, document, this section could have been interpreted as requiring such action rather than making it optional.

- A Paperwork Reduction Act notice has been added to the proposed rule on a currently existing VAAR clause at section 852.207-70, Report of employment under commercial activities, and the clause has been added to VAAR Part 812 for use in commercial item acquisitions.

- Based on updated Federal Procurement Data System data, the estimated number of respondents and total annual reporting and recordkeeping burden for clause 852.237-7, Indemnification and Medical Liability Insurance, has been reduced.

#### **Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), collections of information are contained in the VAAR clauses at section 852.207-70, Report of employment under commercial activities, and section 852.237-7, Indemnification and Medical Liability Insurance, as set forth in the **SUPPLEMENTARY INFORMATION** portion of this revised proposed rule. Although this document proposes to add the clauses at sections 852.207-70 and 852.237-7 for use in commercial item solicitations and contracts, this Paperwork Reduction Act notice of this document seeks approval for collections of information for both commercial and non-commercial item and service contracts for these clauses. These clauses can be used in both commercial and non-commercial item and service solicitations and contracts. As required

under § 3507(d) of the Act, VA has submitted a copy of this proposed rulemaking action to the Office of Management and Budget (OMB) for its review of the collection of information.

OMB assigns control numbers to collections of information it approves. VA 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.

Comments on the collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-A171."

*Title and Provision/Clause Number:* Clause 852.207-70, Report of employment under commercial activities.

*Summary of collection of information:* This clause would be used in solicitations for commercial services where the work is currently being performed by VA employees and where those employees might be displaced as a result of award to a commercial firm. The clause requires contractors awarded such contracts to provide, within 5 days of contract award, a list of employment openings, including salaries and benefits, and blank job application forms. The clause also requires the contractor, prior to the contract start date, to report: the names of adversely affected Federal employees offered employment openings; the date the offer was made; a description of the position; the date of acceptance and the effective date of employment; the date of rejection if an employee rejected an offer; the salary and benefits contained in any rejected offer; and the names of employees who applied but were not offered employment and the reasons for withholding offers to those employees. In addition, the clause requires the contractor, during the first 90 days of contract performance, to report the names of all persons hired or terminated under the contract.

*Description of need for information and proposed use of information:* The information is required to assist the contracting officer in monitoring the contractor's compliance with the employment requirements of this clause and FAR clause 52.207-3, Right of First Refusal.

*Description of likely respondents:* Contractors awarded contracts for commercial services which might result in the conversion, from in-house to contract performance, of work currently being performed by VA employees.

*Estimated number of respondents:* 200.

*Estimated frequency of responses:* 5 reports per contract.

*Estimated average burden per collection:* 30 minutes per report.

*Estimated total annual reporting and recordkeeping burden:* 500 hours.

*Title and Provision/Clause Number:* Clause 852.237-7, Indemnification and Medical Liability Insurance.

*Summary of collection of information:* This clause is used in solicitations for nonpersonal health-care services in lieu of FAR clause 52.237-7. It requires the apparent successful bidder/offeror, prior to contract award, to furnish evidence that the firm possesses the types and amounts of insurance required by the solicitation. Following contract award, the contractor must notify the contracting officer if there are any changes in the firm's insurance coverage during the contract period. Prior to award, this evidence is in the form of a certificate from the firm's insurance company. After award, it is in the form of a letter or other correspondence, plus additional certificates.

*Description of need for information and proposed use of information:* The information is required to protect VA by ensuring that the firm to which award will be made possesses the types and amounts of insurance required by the solicitation. It helps ensure that VA will not be held liable for any negligent acts of the contractor and ensures that VA beneficiaries and the public are protected by adequate insurance coverage.

*Description of likely respondents:* Apparent successful bidders/offerors on solicitations for nonpersonal health-care services.

*Estimated number of respondents:* 1,500.

*Estimated frequency of responses:* Usually just once for each contract awarded.

*Estimated average burden per collection:* 30 minutes.

*Estimated total annual reporting and recordkeeping burden:* 750 hours.

The Department considers comments by the public on proposed collections of information in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;

Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;

Enhancing the quality, usefulness, and clarity of the information to be collected; and

Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the proposed collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed regulation.

### Regulatory Flexibility Act

#### Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis is provided to meet the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

a. A description of the reasons why action by the Department is being considered.

*Response:* As more fully explained above, the proposed rule would amend the VAAR to implement the provisions of 38 U.S.C. 8151-8153, which authorize the Secretary of Veterans Affairs, in consultation with the Administrator of Federal Procurement Policy, to prescribe simplified procedures for the procurement of health-care resources. We believe the simplified procedures will allow VA to become more efficient in procuring health-care resources.

b. A succinct statement of the objectives of, and legal basis for, the proposed rule.

*Response:* The objective of the proposed rule is to allow VA to become more efficient in procuring health-care resources and thereby strengthen the medical programs of the Department and improve the quality of health care provided to veterans.

The legal basis for the proposed rule is contained in 38 U.S.C. 8151-8153, which provide that the Secretary, in consultation with the Administrator for Federal Procurement Policy, may prescribe simplified procedures for the procurement of health-care resources.

c. A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.

*Response:* The description of the small entities that could be affected by the proposed rule would be small entities that provide commercial services or the use of medical equipment or space to the health-care industry.

We do not have precise figures on the number of small entities that could potentially be affected by the proposed rule. Any small entity that provides, or wishes to provide, commercial services or the use of medical equipment or space to VA health-care facilities could potentially be affected.

However, the proposed rule would not apply to the majority of VA acquisitions. The proposed rule would apply only to competitive acquisitions of commercial services or the use of medical equipment or space conducted by the Veterans Health Administration (VHA) and which specifically reference the authority of 38 U.S.C. 8153. The proposed rule would not apply to acquisitions of supplies or equipment or to acquisitions on behalf of the Veterans Benefits Administration (VBA) or the National Cemetery Administration (NCA). Except for section 873.108(b), the proposed rule would not apply to VHA sole source acquisitions from affiliated institutions or entities associated with affiliated institutions. The authority for VA to contract on a sole source basis with an institution affiliated with VA or with a medical practice group or other approved entity associated with an affiliate, addressed in the proposed rule at 873.108(b), is authorized by law and is not dependent upon this rulemaking. The proposed rule would not apply to acquisitions of services for which other specific authorities apply, such as acquisitions of nursing home care services, which are acquired under the authority of 38 U.S.C. 1720, or to acquisitions of non-commercial services, such as construction.

We have no relevant data regarding commercial service acquisitions below \$25,000. However, we expect little application of the proposed rule to acquisitions below \$25,000. Existing FAR provisions for such acquisitions are already very simple and the provisions of the revised proposed rule likely would not provide significant benefit to the Government to warrant use of this authority.

In Fiscal Year (FY) 1998, VHA reported approximately 6,000 individual service transactions (excluding classification codes C, E,

Q402, Y, and Z (architect/engineer, purchase of structures, nursing home, construction, and maintenance of real property, respectively), all of which we believe are not covered by the proposed rule) valued in excess of \$25,000 to the Federal Procurement Data System. Of those transactions, approximately 3,000 were awarded to small businesses and approximately 900 were awarded to non-profit businesses. Similar figures were reported for FY 1999. Of the total acquisition dollars associated with these 6,000 annual awards, we estimate that in FY 1998, approximately 42 percent, and in FY 1999, approximately 44 percent, were awarded to small businesses.

d. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which would be subject to the requirement, and the type of professional skills necessary for preparation of the report or record.

*Response:* The reporting or recordkeeping requirements of the clauses at section 852.207-70, Report of employment under commercial activities, and section 852.237-7, Indemnification and Medical Liability Insurance, are discussed in the Paperwork Reduction Act (PRA) portion of the proposed rule. The clause at section 852.207-70 requires the contractor, on contracts where current VA employees are displaced, to report on employment openings and on efforts to hire displaced VA employees. The clause at section 852.237-7 requires contractors, on contracts for nonpersonal health-care services, to provide evidence of liability insurance. The revised proposed rule imposes no new reporting or recordkeeping requirements not already required by the VAAR. Currently, the VAAR requires that these clauses be included in all applicable solicitations and contracts, i.e., contracts where VA employees might be displaced or contracts for nonpersonal health-care services. The rule proposes to provide clarification that these clauses would continue to be required in all applicable service contracts, including commercial service contracts issued under the authority of 38 U.S.C. 8153. Small entities currently holding contracts where VA employees might be displaced or for nonpersonal health-care services are required to provide employment reports or evidence of liability insurance, as applicable. Under the revised proposed rule, there would be no change to those requirements and no new added requirements. There

would be no additional small entities affected by the revised proposed rule that would not already be affected by the current regulations. No professional skills are necessary to comply with these reporting and recordkeeping requirements.

e. An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the rule.

*Response:* The provisions of the proposed rule, if adopted, would take precedence over currently existing regulations in the FAR and VAAR. To the extent that the new rule would apply, there would be no conflict, duplication, or overlap with VA or other Federal rules.

f. A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

*Response:* We believe that, with two exceptions, the provisions of the proposed rule, where those provisions differ from the FAR, are small business/large business neutral, i.e., they would have neither a positive nor a negative impact on small business or large business. The two exceptions concern the authority to waive FAR small business set-aside provisions and changes concerning the transmission of solicitation notices to the Governmentwide point of entry (GPE).

1. The proposed rule at section 873.107 contains a provision allowing the head of the contracting activity (HCA) to waive the set-aside of an acquisition for small business. The HCA must determine that the waiver is in the best interest of the Government. The availability of this authority may result in acquisitions where small businesses have to compete against large businesses rather than compete only against other small businesses.

The alternatives to this waiver authority that were considered in order to limit the impact of waivers on small businesses included having no waiver authority or limiting the application of that authority to specific types of acquisitions, such as acquisitions for medical services, or limiting the authority to acquisitions in excess of a certain dollar threshold. For the reasons stated below, we determined to place no limits, other than those contained in the revised proposed rule, on the application of this waiver authority.

As noted above, the revised proposed rule would only apply to a limited number of acquisitions. We believe the waiver authority would be used in very few of those limited number of

acquisitions, primarily in acquisitions where it is critical to broaden the pool of sources considered in order to obtain the highest quality patient care services at reasonable prices. In such cases, it would not be in VA's best interest to exclude non-profit teaching hospitals and universities and other similar high quality large businesses from the competition. Small businesses could still compete and would have an equal opportunity to be considered for award. The availability of this authority, while most critical to direct patient care service acquisitions, could be a necessary element of other commercial service acquisitions that are critical to the optimum functioning of the medical centers.

In some limited circumstances, the waiver authority of section 873.107 may have a beneficial impact on small entities. As noted above, VA has authority to contract on a sole source basis with medical schools, hospitals, and clinics affiliated with VA. Medical schools, hospitals, and clinics are almost exclusively large or nonprofit businesses. Under the FAR, if a VA medical center wishes to seek competition for services currently being acquired from its affiliate, the affiliate would be excluded from bidding on that competition if there were two or more small businesses capable of providing the services. It is in VA's best interest to obtain state-of-the-art medical services from the highest qualified sources at reasonable prices. Without the waiver authority, VA medical centers would most likely continue to award sole source contracts to its affiliates rather than seek competition, since, under a competitive solicitation, those affiliates might be excluded as potential sources for those services. While VA medical centers might be willing to consider other sources, they generally are unwilling to exclude their affiliate as a potential source. However, under the waiver procedures of the proposed rule, VA would no longer be required to exclude its affiliates from consideration. Accordingly, VA medical centers may be more likely to issue competitive solicitations for highly technical medical services rather than acquire such services on a sole source basis from their affiliates. Rather than reducing small business access to VA acquisitions of medical services, the waiver process could result in increased access to such acquisitions by small businesses. In this regard, once this rule is in place, VA intends to monitor, through the Federal Procurement Data System, the use of the procedures provided in this proposed rule and the

impact on VA's socioeconomic programs.

2. The FAR requires that all proposed acquisitions, including sole source acquisitions, exceeding \$25,000, with certain exceptions, be transmitted to the GPE. The revised proposed rule differs from the FAR in several ways. First, it provides, at section 873.108(a), that acquisitions exceeding the simplified acquisition threshold (SAT) (currently \$100,000) would not have to be announced in the GPE. Rather, the revised proposed rule would require that contracting officers publicly announce such proposed acquisitions utilizing a medium designed to obtain competition to the maximum extent practicable. The revised proposed rule lists a number of examples for where the announcements may be accessed, including the GPE. The intent of the revised proposed rule is to maximize the dissemination of information regarding such proposed acquisitions, not to limit dissemination. Most acquisitions for services are of interest only to the local community. In many cases, it is impossible for a firm located some distance from a VA medical center to provide coronary bypass operations, X-ray or oncology services, or other services necessary to operate the medical center, on a timely basis. We believe that both small and large local service providers of health-care resources (e.g., hospitals and clinics) are more likely to be made aware of acquisition opportunities if the acquisitions are announced in mediums that are seen and read by the local service community or if they are contacted directly. Accordingly, we believe this provision of the proposed rule would tend to increase competition rather than decrease competition and provide small businesses with increased opportunities.

Second, the proposed rule at section 873.108(b) would provide that sole source acquisitions from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution are exempt from the requirement for synopsis in the GPE. 38 U.S.C. 8153 specifically authorizes VA to acquire health-care resources on a sole source basis from institutions affiliated with VA and from medical practice groups and other entities associated with an affiliated institution. Exempting such acquisitions from synopsis in the GPE is consistent with statute, which imposes no requirement for VA to solicit and consider any other offers. Thus, this provision of the proposed rule would have no impact on competition, since

competition is not required under any circumstances.

Section 873.108(b) would also exempt from publication sole source acquisitions of hospital care, medical services, and other health-care services from any source, whether or not the source is affiliated with VA. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved. Acquisitions for hospital care, medical services, or other health-care services would usually be conducted on a sole source basis only if there was an emergency need for such services. Otherwise, the acquisitions would likely be conducted competitively, if not acquired from an affiliate. The FAR provides an exemption from synopsis in the GPE under conditions of unusual or compelling urgency and where the Government would be seriously injured by any delay due to the publication requirement. We expect that most of the sole source acquisitions of hospital care, medical services, and other health-care services covered by this provision will be conducted under conditions of unusual or compelling urgency. Such acquisitions would include emergency hospital care for a veteran in an area not served by a nearby VA medical center. Even under the FAR, this type of acquisition is exempt from synopsis in the GPE by virtue of its being an urgent and compelling acquisition. This provision of the proposed rule would simplify the acquisition process by freeing the contracting officer from having to make individual determinations regarding publication for each sole source acquisition of hospital care, medical services, and other health-care services. Since we expect most such acquisitions to already be exempt under the FAR, we believe this provision would have little, if any, impact on competition or on awards to small businesses.

Third, the proposed rule at section 873.108(c) would exempt acquisitions below the SAT from the requirement for public announcement, including synopsis in the GPE. However, the rule at section 873.104 would require the contracting officer to seek competition to the maximum extent practicable and to permit all responsible sources, as appropriate, to submit a bid, proposal, or quotation. In addition, for acquisitions below the SAT, section 873.111 states that contracting officers should solicit a sufficient number of sources to promote competition to the maximum extent practicable. Section 873.107 would require that acquisitions be set aside for small business. These

provisions would tend to mitigate any negative impact that section 873.108(c) would have on small businesses.

The alternatives to the above provisions regarding public announcements in the GPE that were considered were to eliminate these provisions and follow the provisions of the FAR or to limit the exemptions to specific categories of acquisitions, such as acquisitions for medical services. The objectives of the proposed rule are to allow VA to become more efficient in procuring health-care resources. The intent of this revised proposed rule is to provide procurement processes that are simpler and less time consuming than those of the FAR. As discussed above, we believe that the flexibility to select the public medium that best captures the awareness of interested sources will enable the Department to maximize the effective distribution of information on VA solicitations and more efficiently take advantage of competition without decreasing competition. For this reason, the provisions regarding publicizing contract actions have been retained without change.

**List of Subjects**

48 CFR Parts 801 and 852

Government Procurement, Reporting and recordkeeping requirements.

48 CFR Parts 806, 812, 837, and 873

Government procurement.

Approved: February 15, 2001

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

For the reasons set forth in the preamble, 48 CFR chapter 8 is proposed to be amended as follows:

**PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM**

1. The authority citations for Part 801 continue to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**801.301-70 [Amended]**

2. The chart in paragraph (c) of section 801.301-70 is amended by adding two new entries in numerical order to read as follows:

**801.301-70 Paperwork Reduction Act requirements.**

\* \* \* \* \*  
(c) \* \* \*

48 CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
852.207-70 .....	2900-[number]

48 CFR part or section where identified and described	Current OMB control No.
* * * * *	* * * * *
852.237-7 .....	2900-[number]
* * * * *	* * * * *

**801.602-70 [Amended]**

3. In 801.602-70, paragraphs (a)(4)(vi) and (a)(4)(vii) are revised to read as follows:

**801.602-70 Legal/technical review requirements to be met prior to contract execution.**

(a) \* \* \*

(4) \* \* \*

(vi) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.

(vii) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151-8153.

\* \* \* \* \*

**801.602-71 [Amended]**

4. In 801.602-71, paragraph (b)(2) is revised to read as follows:

**801.602-71 Processing contracts for legal/technical review.**

\* \* \* \* \*

(b) \* \* \*

(2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M-1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

\* \* \* \* \*

**801.602-72 [Amended]**

5. In 801.602-72, paragraph (b) is revised to read as follows:

**801.602-72 Documents to be submitted for legal review.**

\* \* \* \* \*

(b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M-1, Part 1, Chapter 34.

\* \* \* \* \*

**PART 806—COMPETITION REQUIREMENTS**

6. The authority citations for Part 806 continue to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**806.302-5 [Amended]**

7.-8. In 806.302-5, paragraph (b) is revised, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

**806.302-5 Authorized or required by statute.**

\* \* \* \* \*

(b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151-8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.

**806.302-5 Authorized or required by statute.**

(c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151-8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and VAAR 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

\* \* \* \* \*

**PART 812—ACQUISITION OF COMMERCIAL ITEMS**

9. The authority citations for Part 812 continue to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**812.301 [Amended]**

10. In 812.301, paragraph (c) is revised and paragraph (g) is added to read as follows:

**812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**

\* \* \* \* \*

(c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:

- (1) 852.207–70, Report of employment under commercial activities.
- (2) 852.211–71, Guarantee clause.
- (3) 852.211–72, Inspection.
- (4) 852.211–73, Frozen processed foods.
- (5) 852.211–74, Telecommunications equipment.
- (6) 852.211–75, Technical industry standards.
- (7) 852.214–70, Caution to bidders-bid envelopes.
- (8) 852.216–70, Estimated quantities for requirements contracts.
- (9) 852.229–70, Purchases from patient's funds.
- (10) 852.229–71, Purchases for patients using Government funds and/or personal funds of patients.
- (11) 852.233–70, Protest content.
- (12) 852.237–7, Indemnification and Medical Liability Insurance.
- (13) 852.237–70, Contractor responsibilities.
- (14) 852.237–71, Indemnification and insurance (vehicle and aircraft service contracts).
- (15) 852.252–1, Provisions or clauses requiring completion by the offeror or prospective contractor.
- (16) 852.270–1, Representatives of contracting officers.
- (17) 852.270–2, Bread and bakery products.
- (18) 852.270–3, Purchase of shellfish.

\* \* \* \* \*

(g) When soliciting for commercial services or the use of medical equipment or space under the authority of (VAAR) 48 CFR part 873 and 38 U.S.C. 8151–8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:

- (1) 852.273–70, Late offers.
- (2) 852.273–71, Alternative negotiation techniques.
- (3) 852.273–72, Alternative evaluation.

(4) 852.273–73, Evaluation—health-care resources.

(5) 852.273–74, Award without exchanges.

**PART 837—SERVICE CONTRACTING**

11. The authority citations for Part 837 continue to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

**837.403 [Amended]**

12. Section 837.403 is amended by adding, at the end of the first sentence, “, including solicitations and contracts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151–8153 and (VAAR) 48 CFR part 873”.

**PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

13. The authority citations for Part 852 continue to read as follows:

**Authority:** 38 U.S.C. 501 and 40 U.S.C. 486(c).

14. In section 852.207–70, the introductory text is revised to read as follows:

**852.207–70 Report of employment under commercial activities.**

As prescribed in 807.304–77 and 873.110, the following clause must be included in A–76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151–8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

\* \* \* \* \*

15. Section 852.273–70 is added to read as follows:

**852.273–70 Late offers.**

As prescribed in 873.110(a), insert the following provision:

LATE OFFERS (Date)

This provision replaces paragraph (f) of FAR provision 52.212–1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

16. Section 852.273–71 is added to read as follows:

**852.273–71 Alternative negotiation techniques.**

As prescribed in 873.110(b), insert the following provision:

ALTERNATIVE NEGOTIATION TECHNIQUES (Date)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

17. Section 852.273–72 is added to read as follows:

**852.273–72 Alternative evaluation.**

As prescribed in 873.110(c), insert the following provision:

ALTERNATIVE EVALUATION (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by—*[Contracting officer insert description of how the information may be viewed electronically or otherwise]*—Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

18. Section 852.273–73 is added to read as follows:

**852.273–73 Evaluation—health-care resources.**

As prescribed in 873.110(d), in lieu of FAR provision 52.212–2, the contracting officer may insert a provision substantially as follows:

EVALUATION—HEALTH-CARE RESOURCES (Date)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:—*[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to*

evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]—

(b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

19. Section 852.273–74 is added to read as follows:

**852.273–74 Award without exchanges.**

As prescribed in 873.110(e), insert the following provision:

**AWARD WITHOUT EXCHANGES (Date)**

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

20. Part 873 is added to read as follows:

**PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES**

Sec.

- 873.101 Policy.
- 873.102 Definitions.
- 873.103 Priority sources.
- 873.104 Competition requirements.
- 873.105 Acquisition planning.
- 873.106 Resolicitation exchanges with industry.
- 873.107 Socioeconomic programs.
- 873.108 Publicizing contract actions.
- 873.109 General requirements for acquisition of health-care resources.
- 873.110 Solicitation provisions.
- 873.111 Acquisition strategies for health-care resources.
- 873.112 Evaluation information.
- 873.113 Exchanges with offerors.

- 873.114 Best value pool.
- 873.115 Proposal revisions.
- 873.116 Source selection decision.
- 873.117 Award to successful offeror.
- 873.118 Debriefings.

**Authority:** 38 U.S.C. 8151–8153.

**873.101 Policy.**

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

**873.102 Definitions.**

*Commercial service* means a service, except construction exceeding \$2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

*Health-care providers* includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

*Health-care resource* includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.)), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

**873.103 Priority sources.**

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) and FAR subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

**873.104 Competition requirements.**

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38

U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

(b) Acquisition of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required.

(c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.

(d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6.

**873.105 Acquisition planning.**

(a) Acquisition planning is an indispensable component of the total acquisition process.

(b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal, administrative, and technical personnel, and such other

expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service.

(c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108.

(d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions, and conclusions and included in the contract file, along with a copy of the briefing materials.

#### **873.106 Presolicitation exchanges with industry.**

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer.

(b) Techniques to promote early exchange of information include—

- (1) Industry or small business conferences;
- (2) Public hearings;
- (3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the

provisions therein would provide relevant information;

- (4) One-on-one meetings with potential offerors;
- (5) Presolicitation notices;
- (6) Draft Requests for proposals (RFPs);
- (7) Requests for information (RFIs);
- (8) Presolicitation or preproposal conferences;
- (9) Site visits;
- (10) Electronic notices (e.g., Internet); and
- (11) Use of the Procurement Marketing and Access Network (PRO-NET).

#### **873.107 Socioeconomic programs.**

(a) *Implementation.* This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502-2, and 19.502-3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government.

(b) *Rejecting Small Business Administration (SBA)*

*recommendations.* (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.

(2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless a determination is made in writing by the contracting officer that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the

determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.

(3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding \$5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding \$5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.

(4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.

(c) *Contracting with the Small Business Administration (the 8(a) Program).* The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

(d) *Certificates of Competency and determinations of responsibility.* The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

#### **873.108 Publicizing contract actions.**

(a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).

(1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.

(2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a

request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.

(3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

(b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)).

(c) For acquisitions below the SAT, a public announcement is optional.

(d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and this part 873.

#### **873.109 General requirements for acquisition of health-care resources.**

(a) *Source selection authority.* Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873.

(b) *Statement of work/Specifications.* Statements of work or specifications must define the requirement and should, in most instances, include

qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.

(c) *Documentation.* Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include:

(1) A brief written description of the procedures used in awarding the contract;

(2) The market research, including the determination that the acquisition involves health-care resources;

(3) The number of offers received; and

(4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.

(d) *Time for receipt of quotations or offers.* (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.

(2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).

(e) *Cancellation of procurements.* Without regard to FAR 14.404-1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

#### **873.110 Solicitation provisions.**

(a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273-70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.

(b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used.

(c) The contracting officer shall insert the provision at 852.273-72, Alternative evaluation, in lieu of the provision at

52.212-2, Evaluation—Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

(d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212-2.

(e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273-74, Award without exchanges, in the RFQ or RFP.

(f) The contracting officer shall insert the clauses at FAR 52.207-3, Right of First Refusal of Employment, and at 852.207-70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

#### **873.111 Acquisition strategies for health-care resources.**

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) *Request for quotations.* (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made.

(2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein.

(b) *Sealed bidding.* FAR part 14 provides procedures for sealed bidding.

(c) *Negotiated acquisitions.* The procedures of FAR parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this part.

(d) *Multiphase acquisition technique.*

(1) *General.* Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.

(2) *First phase notice.* In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.

(3) *First phase responses.* Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(4) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.

(5) *Subsequent phases.* Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.

(6) *Debriefing.* Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition.

(e) *Alternative negotiation techniques.*

(1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:

(i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.

(ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.

(2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

#### **873.112 Evaluation information.**

(a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.

(b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition.

(c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.

(d) The relative importance of any evaluation information included in a solicitation must be set forth therein.

#### **873.113 Exchanges with offerors.**

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873.

(b) Exchanges with all potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.

(c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.

(d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.

(e) *Improper exchanges.* Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without

consent of the offeror in accordance with FAR parts 3 and 24.

(f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

#### **873.114 Best value pool.**

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.

(c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the

proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time.

#### **873.115 Proposal revisions.**

(a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal.

(b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.

(c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

#### **873.116 Source selection decision.**

(a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.

(b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals

and make award recommendations, if the contracting officer requests such assistance.

(c) The source selection decision must be documented in accordance with FAR 15.308.

#### **873.117 Award to successful offeror.**

(a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.

(c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award.

(d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

#### **873.118 Debriefings.**

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506.

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# Notices

Federal Register

Vol. 66, No. 110

Thursday, June 7, 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.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 01-017N]

#### Codex Alimentarius Commission: 24th Session of the Codex Alimentarius Commission (Codex)

**AGENCY:** Office of the Under Secretary for Food Safety, USDA.

**ACTION:** Notice of public meeting, request for comments.

**SUMMARY:** The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), is sponsoring a public meeting on June 6th, 2001.<sup>1</sup> The purpose of this meeting is to provide information and receive public comments on agenda items that will be discussed at the Twenty-fourth Session of the Codex Alimentarius Commission, which will be held in Geneva, Switzerland from July 2-7, 2001. The Under Secretary recognizes the importance of providing interested parties with information about the Codex Alimentarius Commission.

**DATES:** The public meeting is scheduled for June 6, 2001, from 1 p.m. to 4 p.m.

**ADDRESSES:** The public meeting will be held in the Franklin-Adams Room at the Washington Plaza Hotel, 10 Thomas Circle, Washington, DC. 20005. To review copies of the documents referenced in this notice, contact the Food Safety and Inspection Service Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250-3700. The documents will also be accessible via the World Wide Web at the following address: <http://www.codexalimentarius.net/cac24/>

<sup>1</sup> FSIS is filing this notice for immediate public inspection on June 5, 2001 because FSIS was not able to publish notification in advance of this public meeting in the Federal Register due to late changes to the agenda.

*doctiste.htm*. Submit one original and two copies of written comments to the FSIS Docket Room at the address above and reference docket number 01-017N. All comments submitted in response to this notice will be available for public inspection in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** F. Edward Scarbrough, Ph.D., U.S. Manager for Codex Alimentarius, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue SW, Washington, DC 20250; Telephone (202) 205-7760, Fax: (202) 720-3157.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Codex Alimentarius Commission (Codex) was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. Codex meets biennially. The Executive Committee serves as the executive body of Codex between the biennial meetings.

The provisional agenda items and the relevant documents to be discussed during the public meeting are:

1. Election of Officers of the Commission and appointment of Regional Coordinators, Document ALINORM 01/2
2. Report by the Chairperson on the Forty-seventh and Forty-eighth Sessions of the Executive Committee, Documents ALINORM 01/3 and ALINORM 01/4
3. Report on the financial situation of the Joint FAO/WHO Food Standards Programme for 2000/01 and 2002/03, Document ALINORM 01/5
4. Report by the Secretariat on relations between the Codex Alimentarius Commission and, (a) Other international intergovernmental organizations Part I, (b) International

non-governmental organizations Part II, Document ALINORM 01/8

5. Consideration of matters arising from FAO and WHO Conferences and Governing Bodies, Document ALINORM 01/7

6. Consideration of the Draft Strategic Framework, Proposed Draft Medium Term Plan 2003-2007 and Chairperson's Action Plan, Document ALINORM 01/6

7. Risk analysis policies of the Codex Alimentarius Commission, Document ALINORM 01/9

8. Consideration of proposed amendments to the Procedural Manual of the Codex Alimentarius Commission, Document ALINORM 01/10

9. Consideration of Codex standards and related texts, (a) Draft standards and related texts at Step 8 or equivalent Part I, (b) Proposed draft standards and related texts at Step 5 Part II, (c) Proposals to elaborate new standards and/or related texts Part III, Document ALINORM 01/21

10. Matters arising from reports of Codex Committees and Task Forces Part IV, Document ALINORM 01/21

11. Codex Committees and ad hoc Task Forces, (a) Designation of Host Governments Part I, (b) Proposed schedule of Codex Sessions 2002-2003, Document ALINORM 01/16

#### Public Meeting

At the June 6th public meeting, the agenda items will be described and discussed, and attendees will hear brief descriptions of the issues and will have the opportunity to pose questions and offer comments.

#### Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would

be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720-5704.

Done at Washington, DC on May 24, 2001.

**F. Edward Scarbrough,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 01-14473 Filed 6-5-01; 1:59 pm]

**BILLING CODE 3410-DM-P**

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 00-035N]

#### FSIS—A Public Health Approach to Processing Inspection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting; request for comments.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) will hold a public meeting, which is intended to be the first in a series, on an FSIS initiative to improve its inspection of processed meat and poultry products. At the first meeting, the Agency will provide an overview of the Agency's use of risk analysis in protecting public health. The Agency will also review its Strategic Plan for 2000-2005, and discuss its view of the key attributes of a public health regulatory agency. The Agency will then discuss the next steps that it proposes to take to develop an inspection system that minimizes the risks from processed products while making optimal use of processing inspection resources, and will invite comments on these next steps and on how best to achieve the Agency's objectives.

**DATES:** The public meeting is scheduled for June 7, 2001, from 9:00 am to 4:00 pm.

**ADDRESSES:** The meeting will be held at the Holiday Inn—Capitol, 550 "C" Street, SW., Washington, DC 20024.

*Comments:* FSIS welcomes comments at any time on the topics to be discussed at the public meeting, and particularly on the Agency's strategic plan. Please send an original and two copies of comments to the Food Safety and

Inspection Service Docket Clerk: Docket #00-035N, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250. Comments may also be sent by facsimile to (202) 205-0381. The comments and the official transcript of the meeting, when it becomes available, will be kept in the Docket Clerk's office at the above address. FSIS has made copies of the FSIS Strategic Plan for 2000-2005 available in the docket room and on the FSIS website at "<http://www.fsis.usda.gov/OM/planning/sp2005.htm>". Copies will also be available at the meeting.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jane Roth, Director, Program Evaluation and Improvement Staff, Office of Policy, Program Development and Evaluation, at (202) 720-6735. Registration for the meeting will be on-site. Persons requiring a sign language interpreter or other special accommodation should notify Ms. Sheila Johnson at (202) 690-6498 by June 1, 2001.

#### SUPPLEMENTARY INFORMATION:

##### Background

FSIS administers the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Egg Products Inspection Act. The Agency's activities are intended to prevent the distribution in interstate or foreign commerce, for human food purposes, of adulterated or misbranded meat, poultry, and egg products, including products that may transmit diseases or that may be otherwise injurious to health.

In recent years, the Agency has placed increased emphasis on its public health protection role. Throughout the 1990's, the Agency's most important goal was an improved food safety inspection system, exemplified by the Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) regulations which were fully implemented last year. FSIS has consistently sought the enhancement of public health by minimizing foodborne illness from meat, poultry, and egg products. The Agency has worked toward achieving this by measures intended to reduce pathogens on raw products, by strengthening relationships with public health agencies at the Federal and State levels, food safety information and training at every point in the food production and marketing chain, and by promoting international cooperation in the field of food safety.

The Agency's Strategic Plan for 2000-2005 proposes that FSIS continue to focus its operations and resources on food safety and continue to strengthen

the scientific basis for its regulatory activities and initiatives.

FSIS wants the views, suggestions and comments of all of its food safety constituencies, and the general public on the approaches it is considering or should consider to achieve its mission.

#### Public Meeting

At the first public meeting, on June 7, 2001, FSIS officials will review the Agency's Strategic Plan for 2000-2005, and will discuss the basic public health objectives and the strategy for achieving these objectives. They will also discuss the role of risk analysis especially with respect to the optimal use of processing inspection resources; the next steps that FSIS proposes to take toward minimizing the risk to consumers of foodborne illness; and the coordination of the Agency's efforts with international authorities, other Federal agencies, and State and local authorities. Finally, the Agency will open the discussion and solicit comment from the attendees.

The following summarizes the major themes that will be discussed at the first meeting.

#### FSIS Strategic Plan 2000-2005

In its Strategic Plan for 2000-2005, FSIS has proposed a long-range program for protecting the public health by improving the Agency's effectiveness as a public health regulatory agency. In order to do this, the Agency has established as its strategic goal the protection of the public health by significantly reducing the prevalence of foodborne hazards from meat, poultry, and egg products. To achieve this goal, the Agency will use the risk analysis model—consisting of risk-assessment, risk-management, and risk-communication segments—recommended by the National Academy of Sciences to regulatory agencies. This model is reflected in the objectives the Agency seeks to meet in achieving its strategic goal.

The first objective is to provide national and international leadership by building within the Agency a risk assessment capability, supported by the latest research and technology, that can be applied to meat, poultry, and egg products. Risk assessment will help the Agency improve its operations to better ensure the safety of meat, poultry, and egg products. Better risk assessment is needed to strengthen the scientific basis for food safety policies and regulatory decisions.

The second objective is to create a coordinated national and international system to manage, from farm-to-table, the food safety risks that may be

presented by meat, poultry, and egg products. Risk managers weigh, in the context of the social and economic environment, the scientific and technical evidence gathered through risk assessments. The conclusions they draw enable them to better direct efforts to reduce, eliminate, or control risks to public health.

FSIS, working with all stakeholders in the farm-to-table continuum, must ensure that public health risks are identified, and that steps are taken to prevent, eliminate, or minimize those risks. The Agency needs to play a more focused and creative role in managing the risks associated with producing, processing, transporting, storing, retailing, and delivering meat, poultry, and egg products to consumers. It also needs to support more rigorous application of risk management strategies at the international level so that products imported into the United States will meet standards equivalent to those that apply to domestic products.

The third objective is to conduct a comprehensive national and international risk communication program that is an open exchange of information and opinion on risk among risk assessors, risk managers, and the public. The risk communication program should promote public confidence in food safety through effective, open, and timely information exchange and science-based education on decisionmaking with respect to food-safety risks, limits to total risk elimination, and prevention and protection strategies. The program would emphasize both education and explanation of issues involved in considering stakeholder views, knowledge, and receptiveness to Agency risk assessments and risk-management decisions.

The fourth objective is to create and maintain an FSIS infrastructure to support the risk assessment, risk management, and risk communication objectives. To enhance public health, FSIS will have to conduct science-based food inspection and invest in the elements of risk analysis, food safety technology, scientific methods, and business process re-engineering, along with workforce training, development, hiring, and retention. New methods of inspection will be based increasingly on science and will require a more scientifically trained workforce.

In striving to improve food safety and to achieve the goals and objectives of the strategic plan, FSIS believes that it can substantially improve its effectiveness as a public health regulatory agency.

### Key Attributes for a Public Health Regulatory Agency

FSIS believes that a public health regulatory agency should embody at least eight key attributes. The first attribute is a public health orientation. FSIS acquires its public health orientation from its legislative mandate to ensure that meat, poultry, and egg products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS exercises its responsibilities by maintaining inspection in approximately 6,000 plants that slaughter cattle, swine, sheep, goats, horses, mules, other equines, and poultry, or that prepare a wide range of further processed products, such as hams, sausages, stews, egg-based mixes, and frozen dinners. The Agency carries out a wide range of scientific support, inspection and compliance, and international activities in fulfilling its public health mission.

The second attribute is a regulatory strategy built on science-based systems to achieve public health goals. These systems include the Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) regulations, which require establishments to develop and carry out sanitation standard operating procedures and HACCP plans and meet process control criteria for generic *Escherichia coli* and pathogen reduction performance standards for *Salmonella*. FSIS is also developing a capability to conduct food safety risk assessments on which to base its regulatory programs. Another example is the Agency's participation, with the Food and Drug Administration (FDA) and the Centers for Disease Control and Prevention (CDC), in FoodNet, an active surveillance network for foodborne disease that provides national estimates of the burden and sources of specific foodborne diseases in the United States.

The third attribute is adopting measures of success to gauge progress in achieving its public health goals. Such measures are contained in the Agency's strategic plan. The Agency's measures for risk management include percentage reductions in the prevalence of *Salmonella* on raw meat and poultry products, percentage reductions in the prevalence of *Listeria monocytogenes* in ready-to-eat meat and poultry products, and the number of risk management policies and decisions made that are based on risk assessments.

The fourth attribute is an open and inclusive manner for the conduct of business, as evidenced by public meetings with constituency groups on issues that bear on the Agency's goals.

From the beginning of its development of the PR/HACCP regulations to the present, FSIS has carried out its public health regulatory initiatives in an open and transparent manner. The Agency plans to continue this public process for future public health initiatives, including its risk assessments.

The fifth attribute is that the assurance that each of its organizational elements contribute to the achievement of the Agency's public health goals. For FSIS, this means that public health-related activities have a priority claim on its inspection, laboratory, administrative, and other resources.

The sixth attribute is the employment of public health professionals. FSIS employs a growing number of individuals with specialized qualifications, including consumer safety officers, epidemiologists, microbiologists, biostatisticians, risk analysts, chemists, toxicologists, veterinary medical officers, and medical officers.

The seventh attribute is the development of external relationships to mobilize other public health resources. Already mentioned is the FoodNet collaboration with CDC and FDA. In epidemiological investigations, FSIS collaborates with these and other Federal agencies and with State and local governments. In drug residue investigations, FSIS may work with FDA. In investigations of zoonotic disease outbreaks, FSIS may work with USDA's Animal and Plant Health Inspection Service or State veterinarians.

The eighth attribute is the use of scientific data to make decisions and allocate resources. In support of its inspection program, FSIS conducts directed sampling for drug and other chemical residues and microbial pathogens, gathers or makes use of existing data on prevalence and enumeration of microbes, investigates conditions of consumer and retail storage, gathers handling and preparation data, follows reports of scientific studies by ARS and other researchers, and uses data from its own or others' risk assessments in making regulatory and resource allocation decisions.

FSIS' strategic plan specifies a program for strengthening each of the foregoing attributes. However, the Agency is and will continue to be open to any ideas or suggestions that will help meet future challenges wherever they arise.

### Next Steps Toward Farm-to-Table Food Safety Assurance

Last year, FSIS completed its phased implementation of the PR/HACCP regulations in all official establishments. Since then, the Agency has turned its attention to determining how to improve the quality and effectiveness of industry food safety programs, including HACCP, and how to improve the Agency's effectiveness as a public health regulatory agency. The Agency has been paying increased attention to regulatory reform, in-plant staffing patterns, residue control in a HACCP environment, and overall improvements in the Agency's ability to respond to future food safety problems.

FSIS has addressed a number of food safety and regulatory reform issues that were deferred while the PR/HACCP regulations were being put in place. For example, the Agency has advanced the process of converting command-and-control requirements to performance standards by issuing a final rule on sanitation and a proposed rule on processed, ready-to-eat meat and poultry products.

The Agency is following the principle of risk-based program design in the reform of its program management infrastructure in both slaughtering and further processing environments. Program infrastructure is a broad area that encompasses assignment of work, expertise and training, data analysis and decisionmaking, communication, and workplace environment.

The Agency has completed significant work on its HACCP-based inspection models project (HIMP) for slaughter plants. This project involves testing a new inspection system under which FSIS targets its resources on carcass conditions that have human health implications. The Agency has also begun to study how it can more effectively use its processing inspection resources by targeting areas where the inherent hazards of products and processes to public health are greatest.

The Agency is initiating new activities and data reports for addressing the hazard to public health posed by products and operations. The Agency intends to rely increasingly on microbiological sampling programs and on the use of epidemiological data on foodborne outbreaks in which meat, poultry, or egg products have been implicated. The Agency also plans to move to a system of team inspection, involving the use of personnel with different types of expertise, to assess the performance of HACCP systems and to deal with food safety problems. FSIS is designing a dynamic process for

responding to and addressing public health problems. As envisioned, this process will rely on a variety of data sources, interdisciplinary teams, and coordination with State and other Federal agencies.

The Agency is also developing plans to intensify its efforts at both ends of the farm-to-table chain. For example, FSIS is exploring the possibility of using veterinary medical officers in ways that would enhance the reliability and effectiveness of farm-to-table food-safety controls.

One idea the Agency is exploring is that of ensuring the availability to District Managers (DMs) of public health data resources and personnel that would improve the ability of the DMs to carry out the Agency's public health strategy. The DMs will play a central, coordinating role under the Agency's reform plans. Possible resources that can be made available to the DMs include special surveys and reviews by teams of specialists; inspection management and enforcement reports; and the results of sampling for *Salmonella* and other pathogens. Also available to them will be district-specific resources, such as personnel with special expertise, risk evaluation data for products and processes, and current information on plant construction, management issues, and pending enforcement actions.

The Agency is developing a plan for delivering HACCP-related training to its personnel through work-unit meetings. The Agency recognizes that it must improve the ability of its personnel to understand their regulatory authorities, to assess the effectiveness of establishment sanitation standard operating procedures and HACCP plans, and to identify hazards to public health on which action must be taken.

### Risk Analysis-Based Approach to Improving Processing Inspection in a Public Health Regulatory Agency

As mentioned above in the context of the Agency's strategic plan, FSIS has chosen a risk analysis-based approach to achieve its strategic goal of reducing the likelihood and prevalence of foodborne hazards in meat, poultry, and egg products. Risk analysis, which consists of risk assessment, risk management, and risk communication, is recognized as a logical and systematic approach to food safety both nationally, for example, by the National Academy of Sciences, and internationally, for example, by the Codex Alimentarius Commission. A risk analysis-based approach to inspection will ensure that hazards to consumers from meat, poultry, and egg products will be minimized.

FSIS is considering the types of information and data needed for a risk-analysis based improvement of processing inspection systems. The Agency believes that the information would include the likely hazards associated with meat, poultry and egg products for each establishment; the processes each establishment uses to produce the product; and the volume of product produced by each establishment. The Agency is also evaluating CDC reports on foodborne illness by location, population segment, organism, and type of food product implicated in the spread of illness. The Agency is studying how it can use such data to determine the magnitude of hazards and the possibility of consumer exposure to those hazards.

The Agency is also trying to determine its future data needs as it moves toward a more risk analysis-based processing inspection system. The Agency believes it will need more information on such things as retail and consumer behavior patterns (e.g., storage, handling and cooking of food), dose-response relationships (e.g., among susceptible populations), and consumption patterns (i.e., frequency and serving size consumed), as well as a better understanding of the growth and decline of microbial populations.

### Implications for Processing Inspection

As the Agency's risk analyses produce more and better quality data and information on the public health risks of food products that are subject to the Agency's regulations, the Agency will use the data and information to reassess its inspection of the processing of meat and poultry products. FSIS has been documenting and analyzing the accomplishments of the current processing inspection system, particularly as that system has been operated in the PR/HACCP environment. In evaluating the current system, the Agency has already found that there are areas where the allocation of processing inspection resources potentially limits the public health effectiveness of the Agency.

FSIS is beginning to explore changes in processing inspection that may be needed to enable the Agency to meet the goals and objectives of its Strategic Plan and to fully function as a public health regulatory agency. FSIS is considering ways of optimizing processing inspection in the light of risk analysis. The Agency is also considering how to use the information from risk analyses to provide its managers with the appropriate decision-making tools, data, and personnel resources that they would need to carry out the Agency's

public health strategy at the field management level.

#### Additional Public Notification

Public awareness of all segments of policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this public meeting, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at <http://www.fsis.usda.gov>. The update is used to provide information on FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720-5704.

Done at Washington, DC on: May 31, 2001.

**Thomas J. Billy,**  
Administrator.

[FR Doc. 01-14474 Filed 6-5-01; 1:59 pm]

BILLING CODE 3410-DM-P

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Holmes/Chipmunk Timber Sale Environmental Impact Statement

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Holmes/Chipmunk Area. The Record of Decision will disclose how the Forest Service has decided to manage approximately 34,000 acres of Federal land. The proposed action would provide approximately 25 to 35 million board feet of timber to local and regional timber markets, final harvest approximately 4,000 acres of 60+ year old aspen experiencing substantial

mortality from blow down, decay, and old age, treat approximately 500 acres of red and white pine communities through prescribed burning and hand release treatments, and provide access to non-federally owned lands within the project boundaries. A range of alternatives responsive to significant issues will be developed, including a no-action alternative. The proposed project is located on the LaCroix Ranger District, Cook MN, Superior National Forest. In addition, the LaCroix Ranger District may create temporary openings greater than 40 acres under 36 CFR 219.27(d)(ii).

**DATES:** Comments concerning the scope of this project should be received by July 27, 2001.

**ADDRESSES:** Please send written comments to: LaCroix Ranger District, Superior National Forest, Attn: Holmes/Chipmunk EIS, 320 N HWY 53, Cook, MN 55723.

**FOR FURTHER INFORMATION CONTACT:** Constance Chaney, District Ranger, or John Galazen, Team Leader, LaCroix Ranger District, Superior National Forest, 320 N HWY 53 Cook, MN 55723, telephone (218) 666-0020.

**SUPPLEMENTARY INFORMATION:** Public participating will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies, individuals, and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth, and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written comments will be solicited through a scoping package that will be sent to the project mailing list and to the local newspaper. For the Forest Service to best use the scoping input, comments should be received by July 23, 2001. Issues identified for analysis in the EIS include the potential effects of the project on and the relationship of the project to: age class distribution, species composition, reforestation, Shipstead Newton Nolan areas, temporary roads, Proposed Management Area 8.4 (inventoried candidate special management complexes), and others.

Based on the results of scoping and the resource capabilities within the Project Area, alternatives, including a no-action alternative, will be developed for the Draft EIS. The Draft EIS is

projected to be filed with the Environmental Protection Agency (EPA) in May 2002. The Final EIS is anticipated in November 2002.

The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EISs must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553, (1978)). Environmental objections that could have been raised at the Draft EIS stage may be waived or dismissed by the courts (*City of Angoon v. Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this Proposed Action, participate by the close of the 45-day comment period, so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns of the Proposed Action, comments during scoping and on the Draft EIS should be as specific as possible and refer to specific pages or chapters. Comments may address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed. In addressing these points reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission, from the public record, by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's

decision regarding the request for confidentiality. If the requester is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

**Permits/Authorizations:** The proposed action may create temporary openings greater than 40 acres. A 60-day public notice and review by the Regional Forester would be needed for such action.

**Responsible Official:** Constance Chaney, LaCroix District Ranger, Superior National Forest, is the responsible official. In making the decision, the responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The responsible official will state the rationale for the chosen alternative in the Record of Decision.

Dated: May 29, 2001.

**Constance Chaney,**

*District Ranger.*

[FR Doc. 01-14368 Filed 6-6-01; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Opal Creek Scenic Recreation Area (SRA) Advisory Council

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** An Opal Creek Scenic Recreation Area Advisory Council meeting will convene in Stayton, Oregon on Monday, June 18, 2001. The meeting is scheduled to begin at 6 p.m., and will conclude at approximately 8:30 p.m. The meeting will be held in the South Room of the Stayton Community Center located on 400 West Virginia Street in Stayton, Oregon.

The Opal Creek Wilderness and Opal Creek Scenic Recreation Area Act of 1996 (Opal Creek Act) (Pub. L. 104-208) directed the Secretary of Agriculture to establish the Opal Creek Scenic Recreation Area Advisory Council. The Advisory Council is comprised of thirteen members representing state, county and city governments, and representatives of various organizations, which include mining industry, environmental organizations, inholders in Opal Creek Scenic Recreation Area, economic development, Indian tribes, adjacent landowners and recreation interests. The council provides advice to the Secretary of Agriculture on preparation of a comprehensive Opal Creek Management Plan for the SRA,

and consults on a periodic and regular basis on the management of the area. The tentative agenda will focus developing standards and guidelines for management of the SRA and discussion of public involvement strategies.

The public comment period is tentatively scheduled to begin at 8 p.m. Time allotted for individual presentations will be limited to 3 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits of the comment period. Written comments may be submitted prior to the June 18 meeting by sending them to Designated Federal Official Stephanie Phillips at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Stephanie Phillips; Willamette National Forest, Detroit Ranger District, HC 73 Box 320, Mill City, OR 97360; (503) 854-3366.

Dated: June 1, 2001.

**Y. Robert Iwamoto,**

*Deputy Forest Supervisor.*

**Disclaimer:** This meeting notice is being published less than 15 days prior to the meeting due to lack of time to adequately plan the meeting between the councils last meeting on May 5 and this upcoming meeting on Monday, June 18. This late notice is authorized under 41 CFR 1016.1015(b)(2).

[FR Doc. 01-14322 Filed 6-6-01; 8:45 am]

**BILLING CODE 3410-11-M**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

#### Notice of Proposed Change to the Natural Resources Conservation Service's National Handbook of Conservation Practices

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture, Maine State Office.

**ACTION:** Notice of availability of proposed changes in the NRCS National Handbook of Conservation Practices, Section IV of the Maine State NRCS Field Office Technical Guide (FOTG) located at [www.me.nrcs.usda.gov](http://www.me.nrcs.usda.gov) under "Draft Standards for Comments" for review and comment.

**SUMMARY:** It is the intention of NRCS to issue revised conservation practice standards in its National Handbook of Conservation Practices. These revised standards are the following: 327

Conservation Cover; 330 Contour Farming; 340 Cover & Green Manure Crop; 324 Deep Tillage; 380 Farmstead & Feedlot Windbreak; 394 Firebreak; 511 Forage Harvest Management; 666 Forest Stand Improvement; 655 Forest Harvest Trails and Landings; 412 Grassed Waterway or Outlet; 561 Heavy Use Area Protection; 441 Irrigation System, Microirrigation; 590 Nutrient Management; 595 Pest Management; 516 Pipeline; 521A Pond Sealing or Lining Flexible Membrane Lining; 338 Prescribed Burning; 391 Riparian Forest Buffer; 490 Site for Woody Plant Establishment; 580 Streambank & Shoreline Protection; 395 Stream Habitat Improvement and Management; 585 Stripcropping, Contour; 612 Tree and Shrub Establishment; 660 Tree and Shrub Pruning; 620 Underground Outlet; 472 Use Exclusion; 313 Waste Storage Facility; 359 Waste Treatment Lagoon; 642 Water Well; 351 Well Decommissioning; 657 Wetland Restoration; 644 Wildlife Upland Habitat Management.

**DATES:** Comments will be received on or before July 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to Christopher R. Jones, Assistant State Conservationist for Technology/Planning, National Resources Conservation Service (NRCS), 967 Illinois Avenue, Suite #3; Bangor, Maine 04401.

A copy of this standard is available from the above individual.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State Technical Guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: May 4, 2001.

**Christopher R. Jones,**

*Assistant State Conservationist for Technology/Planning.*

[FR Doc. 01-14314 Filed 6-6-01; 8:45 am]

**BILLING CODE 3410-16-P**

**DEPARTMENT OF AGRICULTURE****Natural Resources Conservation Service****Notice of Proposed Change to Section IV of the Virginia Field Office Technical Guide**

**AGENCY:** Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

**ACTION:** Notice of availability of proposed changes in the Virginia NRCS Field Office Technical Guide for review and comment.

**SUMMARY:** It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS Field Office Technical Guide specifically in practice standards: #360, Closure of Waste Impoundments; #338, Prescribed Burning; #642, Water Well and #390, Riparian Herbaceous Cover to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

**DATES:** Comments will be received on or before July 9, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229-5014; Telephone number (804) 287-1665; Fax number (804) 287-1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site: <http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITstds/EditStandards.htm>.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: May 31, 2001.

**L. Willis Miller,**

*Assistant State Conservationist/Programs, Natural Resources Conservation Service, Richmond, Virginia.*

[FR Doc. 01-14315 Filed 6-6-01; 8:45 am]

**BILLING CODE 3410-16-P**

**DEPARTMENT OF COMMERCE**

**[I.D. 060401A]**

**Submission for OMB Review; Comment Request**

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* Vessel Monitoring System Requirements in the Western Pacific Pelagic Longline Fishery.

*Form Number(s):* None.

*OMB Approval Number:* None.

*Type of Request:* Regular submission.

*Burden Hours:* 743.

*Number of Respondents:* 165.

*Average Hours Per Response:* 4 hours for equipment installation, 2 hours per year for equipment maintenance, and 24 seconds per day for automatic position reporting.

*Needs and Uses:* Commercial fishing vessels active in the Hawaii-based pelagic longline fishery must allow National Marine Fisheries Service (NMFS) to install vessel monitoring system (VMS) units on their vessel when directed to do so by NMFS enforcement personnel. VMS units automatically send periodic reports on the position of the vessel. NMFS uses the reports to monitor the vessel's location and activities while enforcing area closures. NMFS pays for the units and messaging.

*Affected Public:* Business and other for-profit organizations.

*Frequency:* Messaging frequency varies, from hourly to more or less frequently, depending on location of the vessel relative to closed areas and borders of the U.S. Exclusive Economic Zone.

*Respondent's Obligation:* Mandatory.

*OMB Desk Officer:* David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Madeleine Clayton, Departmental Paperwork 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 David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 2001.

**Madeleine Clayton,**

*Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 01-14404 Filed 6-6-01; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****International Trade Administration**

**[A-580-812]**

**Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from one manufacturer/exporter and one U.S. producer of the subject merchandise, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above (DRAMs) from the Republic of Korea (Korea). The review covers two manufacturers/exporters and six resellers of subject merchandise to the United States during the period of review (POR), May 1, 1999, through December 31, 1999. Based upon our analysis, the Department has preliminarily determined that dumping margins exist for a manufacturer/exporter and the six resellers during the POR. If these preliminary results are adopted in our final results of administrative review, we will instruct the United States Customs Service (Customs) to assess antidumping duties as appropriate. Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Paige Rivas or Ron Trentham, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0651 or (202) 482-6320, respectively.

**SUPPLEMENTARY INFORMATION:****Applicable Statute and Regulations**

Unless otherwise stated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions as of 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 references to the regulations of the Department are to 19 CFR part 351 (2000).

**Background**

The antidumping dumping duty order for DRAMs from Korea was revoked, pursuant to the sunset procedures established by statute, effective January 1, 2000. See *Dynamic Random Access Memory Semiconductors ("DRAMs") of One Megabit and Above From the Republic of Korea; Final Results of Full Sunset Review and Revocation of Order*, 65 FR 1471366 (October 5, 2000). However, we are conducting this review of exports of the subject merchandise to the United States by Hyundai Electronics Industries Co., Ltd. (Hyundai) and LG Semicon Co., Ltd. (LG) during the 8-month period from May 1, 1999, until the effective date of the revocation.

On May 10, 1993, the Department published in the **Federal Register** (58 FR 27250) the antidumping duty order on DRAMs from Korea. On May 16, 2000, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on DRAMs from Korea (65 FR 31141). On May 31, 2000, the petitioner, Micron Technology Inc., ("Micron") requested an administrative review of Hyundai and LG, Korean manufacturers of DRAMs, and six Korean resellers of DRAMs, the G5 Corporation (G5), Kim's Marketing, Jewon Trading (Jewon), Wooyang Industry Co., Ltd. (Wooyang), Jae Won Microelectronics (Jae Won), and Techsan Electronics (Techsan) for the period May 1, 1999, through December 31, 1999. Additionally, the petitioner requested a cost investigation of LG and Hyundai pursuant to section 773(b) of the Act. On May 31, 2000, Hyundai requested that the Department conduct a review of its exports of the subject

merchandise to the United States. On July 7, 2000 (65 FR 131), the Department initiated an administrative review of Hyundai, LG, G5, Kim's Marketing, Jewon, Wooyang, Jae Won, and Techsan, including cost investigations of Hyundai and LG, covering the POR.

On July 19, 2000, the Department sent Sections A, B, and C questionnaires to Hyundai, LG, G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang. On July 31, 2000, the Department sent Sections D and E questionnaires to Hyundai and LG. On October 17, 2000, Hyundai provided its Sections A, B, C, D, and E questionnaire responses. During the instant review, Hyundai acquired LG and included LG's information in its questionnaire responses. For a further discussion of Hyundai's acquisition of LG, see *Affiliation and Collapsing* section below.

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for issuing a preliminary determination in an administrative review if it determines that it is not practicable to complete the preliminary review within the statutory time limit of 245 days. On January 30, 2001, the Department published a notice of extension of the time limit for the preliminary results in this case to May 30, 2001. See *Dynamic Random Access Memory Semiconductors of One Megabit or Above ("DRAMs") From the Republic of Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 66 FR 8198 (January 30, 2001).

**Scope of the Review**

Imports covered by the review are shipments of DRAMs from Korea. Included in the scope are assembled and unassembled DRAMs. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers produced in Korea, but packaged or assembled into memory modules in a third country, are included in the scope; wafers produced in a third country and assembled or packaged in Korea are not included in the scope.

The scope of this review includes memory modules. A memory module is a collection of DRAMs, the sole function of which is memory. Modules include single in-line processing modules (SIPs), single in-line memory modules (SIMMs), or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules which contain additional items which alter the

function of the module to something other than memory, such as video graphics adapter (VGA) boards and cards, are not included in the scope. The scope of this review also includes video random access memory semiconductors (VRAMS), as well as any future packaging and assembling of DRAMs; and, removable memory modules placed on motherboards, with or without a central processing unit (CPU), unless the importer of motherboards certifies with the Customs Service that neither it nor a party related to it or under contract to it will remove the modules from the motherboards after importation. The scope of this review does not include DRAMs or memory modules that are reimported for repair or replacement.

The DRAMS and modules subject to this review are currently classifiable under subheadings 8471.50.0085, 8471.91.8085, 8542.11.0024, 8542.11.8026, 8542.13.8034, 8471.50.4000, 8473.30.1000, 8542.11.0026, 8542.11.8034, 8471.50.8095, 8473.30.4000, 8542.11.0034, 8542.13.8005, 8471.91.0090, 8473.30.8000, 8542.11.8001, 8542.13.8024, 8471.91.4000, 8542.11.0001, 8542.11.8024 and 8542.13.8026 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

**Verification**

As provided in section 782(i) of the Act, from April 23, 2001 to April 27, 2001, we verified sales and cost information provided by Hyundai, using standard verification procedures, including an examination of relevant sales and financial records. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit (CRU) located in room B-099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

**Facts Available (FA)***1. Application of FA*

Section 776(a)(2) of the Act provides that if any interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the

information cannot be verified, the Department shall use facts otherwise available in making its determination.

On July 19, 2000, the Department sent Hyundai, LG, G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang questionnaires requesting that they provide information regarding any sales that they made to the United States during the POR. We did not receive any replies from G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang.

Because G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang have failed to respond to our questionnaires, pursuant to section 776(a) of the Act, we have applied FA to calculate their dumping margins.

## 2. Selection of Adverse FA

Section 776(b) of the Act provides that, in selecting from FA, adverse inferences may be used against a party that failed to cooperate by not acting to the best of its ability to comply with requests for information. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Sess. 870 (1994).

Section 776(b) states further that an adverse inference may include reliance on information derived from the petition, the final determination, the final results of prior reviews, or any other information placed on the record. *See also id.* at 868. In addition, the SAA establishes that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* SAA at 870. In employing adverse inferences, the SAA instructs the Department to consider "the extent to which a party may benefit from its own lack of cooperation." *Id.*

Because G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang did not cooperate by complying with our request for information, and in order to ensure that they do not benefit from their lack of cooperation, we are employing an adverse inference in selecting from among the facts otherwise available. The Department's practice when selecting an adverse FA rate from among the possible sources of information has been to ensure that the margin is sufficiently adverse so "as to effectuate the purpose of the FA rule to induce respondents to provide the Department with complete and accurate information in a timely manner." *See Static Random Access Memory Semiconductors From Taiwan; Final Determination of Sales at Less Than Fair Value*, 63 FR 8909, 8932 (February 23, 1998).

In order to ensure that the rate is sufficiently adverse so as to induce cooperation from G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang, we have assigned to these companies, as adverse FA, the highest calculated margin from any segment of this proceeding, 10.44 percent, which is the rate calculated for Hyundai in the fifth administrative review. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke the Order in Part*, 64 FR 69694 (December 14, 1999) (*Final Results 1999*)

Information from prior segments of the proceeding, such as involved here, constitutes "secondary information" under section 776(c) of the Act. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information used for FA by reviewing independent sources reasonably at its disposal. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. As noted in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources from which the Department can derive calculated dumping margins; the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse FA a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period.

As to the relevance of the margin used for adverse FA, the Department stated in *TRBs* that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse FA, the Department will disregard the

margin and determine an appropriate margin." *Id.*; *see also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (February 22, 1996), where we disregarded the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin.

As stated above, the highest rate determined in any prior segment of the proceeding is 10.44 percent, a calculated rate from *Final Results 1999*. In the absence of information on the administrative record that application of the 10.44 percent rate to G5, Kim's Marketing, Jewon, Jae Won, Techsan, and Wooyang would be inappropriate as an adverse FA rate in the instant review, that the margin is not relevant, or that leads us to re-examine this rate as adverse facts available in the instant review, we have applied, as FA, the 10.44 percent margin from a prior administrative review of this order, and have satisfied the corroboration requirements under section 776(c) of the Act.

## Affiliation, Collapsing, and Successorship

In reviewing Hyundai's questionnaire responses, we noted that the process of Hyundai's acquisition of LG began before the POR (5/1/99–12/31/99). On January 6, 1999, LG announced that it had decided to sell all of its shares to Hyundai. Agreement was reached on the price and other terms of the purchase in the spring of 1999. On April 20, 1999, the purchase price of LG's stock was agreed upon, and LG could no longer make any major decisions without the consent of Hyundai. *See* Decision Memorandum: Whether to Collapse Hyundai Electronics Industries Co., Ltd. and LG Semicon Co., Ltd. into a Single Entity, dated May 1, 2001 (Collapsing Memorandum). The sale was consummated on May 20, 1999, when Hyundai purchased stock in LG from LG Group Companies. *See* Hyundai's December 28, 2000, section A supplemental questionnaire response at 4 (Supplemental Section A Response). With this initial purchase, Hyundai acquired a 58.98 percent interest in LG. Following the receipt of antitrust clearances from authorities in United States, Europe, and other jurisdictions, Hyundai executives took over the direct management of LG's business operations on July 7, 1999. The process was completed on October 13, 1999, after conducting the administrative procedures for the formal acquisition and merger, including public notice and

adoption of a resolution at a meeting of Hyundai shareholders. While the acquisition had not been completed by May 1, 1999, the first day of the POR, this information led us to question the appropriateness of continuing our analysis of Hyundai and LG as separate entities for any part of the POR for the purposes of the preliminary results. In order to collect information germane to this issue, we asked several questions in our November 20, 2000, supplemental questionnaire concerning the collapsing criteria provided for in the Department's regulations. Hyundai also provided information relevant to the collapsing issue in its response to the Department's section A initial questionnaire.

As discussed below, we have analyzed the information on the record in accordance with 771(33) of the Act and section 351.401(f) of the Department's regulations. Based on this analysis, we have preliminarily determined that Hyundai and LG should be considered a single entity with one calculated rate for the entirety of the POR.

#### A. Hyundai and LG Affiliation

Pursuant to section 771(33) of the Act, the Department shall consider the following persons to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For the purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.

As noted above, Hyundai's acquisition of LG began in January 1999 with the announcement that LG had decided to sell all of its shares to Hyundai. Then, on April 20, 1999, the purchase price of LG's stock was agreed upon, and it was agreed that LG would no longer make any major decisions without the consent of Hyundai. On May 20, 1999, Hyundai purchased LG's

stock and on July 7, 1999, Hyundai took over formal management of LG's business operations. The acquisition process was completed on October 13, 1999, and on that date LG ceased to exist as a separate entity and became a part of Hyundai's operations. Thus, pursuant to section 771(33)(E) of the Act, the Department has preliminarily determined that Hyundai and LG were affiliated from the beginning of the POR until October 13, 1999 because of Hyundai's controlling interest in and control of LG.

#### B. Collapsing Hyundai and LG

Section 351.401(f) of the Department's regulations outlines the criteria for collapsing (i.e., treating as a single entity) affiliated producers. Pursuant to section 351.401(f), the Department will treat two or more affiliated producers as a single entity where (1) those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (2) the Department concludes that there is a significant potential for the manipulation of price or production.

Pursuant to section 351.401(f)(2), in identifying a significant potential for the manipulation of price or production, the Department may consider the following factors:

(i) the level of common ownership;

(ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and

(iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

To establish the first prong of the collapsing test, pursuant to section 351.401(f)(1), the producers must have production facilities equipped to manufacture similar or identical products that would not require substantial retooling of either facility to restructure manufacturing priorities.

During the period May 1, 1999 through October 12, 1999, LG possessed production facilities which manufactured the identical subject merchandise as Hyundai. See Hyundai's December 28, 2000, section A supplemental questionnaire response at 16 (Supplemental Section A Response). In addition, in July 1999, semiconductors produced at LG's former facility at Cheongju began to be marketed under Hyundai's name, along with semiconductors produced at

Hyundai's Ichon plant. *Id.* Therefore, we conclude that Hyundai's and LG's production facilities were equipped to manufacture identical products without substantial retooling.

With regard to common ownership, which is one of the factors to be considered under 19 CFR 351.401(f)(2)(i), we note, as discussed above, Hyundai purchased 58.98 percent of LG's stock on May 20, 1999. See Supplemental Section A response at 4.

With respect to the extent to which there was a management overlap between Hyundai and LG, under 19 CFR 351.401(f)(2)(ii), we note that on July 7, 1999, Hyundai took over formal management of LG's business operations. See Supplemental Section A Response at 17.

Finally, with regard to 19 CFR 351.401(f)(2)(iii), sharing financial information and mutual involvement in pricing decisions would be indicative of intertwined operations between companies, on April 20, 1999, the purchase price of LG's stock was agreed upon and LG agreed to make no major business decisions without Hyundai's agreement, thereby giving Hyundai implicit control over LG's pricing and marketing. Further, Hyundai's purchase of a majority of LG's stock on May 20, 1999, and its takeover of management of LG's business operations on July 7, 1999 gave Hyundai explicit control over LG's pricing and marketing.

During the period in question, based on the factors discussed above, we conclude that Hyundai gained complete managerial control of LG and ownership and control of LG's production facilities. Therefore, we find that there existed significant potential for Hyundai to manipulate price or production at LG's facilities.

Based upon a review of the totality of the circumstances, we preliminarily find that collapsing of these two entities for the period May 1, 1999 through October 13, 1999, is appropriate in this case under 19 CFR 351.401(f). For a further discussion on affiliation and collapsing, see Collapsing Memorandum.

#### C. Successorship

As discussed above, Hyundai purchased LG in 1999. The process of acquisition which began in January 1999 was completed on October 13, 1999. Hyundai integrated LG's operations into its own corporate structure and, as of October 13, 1999, LG ceased to exist as a corporate entity.

Although Hyundai did not request that the Department make a successorship determination for

purposes of applying the antidumping duty law, the Department is now making such a successorship determination. In determining whether Hyundai is the successor to both Hyundai and LG for purposes of applying the antidumping duty law, the Department examines a number of factors including, but not limited to, changes in: (1) management, (2) production facilities, (3) suppliers, and (4) customer base. See, e.g., *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 3, 1992) (*Brass Sheet and Strip from Canada*); *Steel Wire Strand for Prestressed Concrete from Japan, Final Results of Changes Circumstances Antidumping Duty Administrative Review*, 55 FR 28796 (July 13, 1990); and *Industrial Phosphorous From Israel; Final Results of Antidumping Duty Changes Circumstances Review*, 59 FR 6944 (February 14, 1994). While examining these factors alone will not necessarily provide a dispositive indication of succession, the Department will generally consider one company to have succeeded another if that company's operations are essentially inclusive of the predecessor's operations. See, *Brass Sheet and Strip from Canada*. Thus, if the evidence demonstrates, with respect to the production and sale of the subject merchandise, that the new company is essentially the same business operation as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

With regards to LG, the evidence on the record demonstrates that with respect to the production and sale of the subject merchandise, Hyundai is the successor to LG. Specifically, the evidence shows that Hyundai operates the same production facilities, and has most of the same customers, suppliers and management, as LG had. Moreover, Hyundai's operations at the former LG facilities remain unchanged, except that they now operate under the Hyundai corporate umbrella rather than as an independent corporate entity.

With regards to Hyundai, the evidence on the record demonstrates that with respect to the production and sale of the subject merchandise, Hyundai is the successor to the former Hyundai. Specifically, the evidence shows that Hyundai operates the same production facilities, and has most of the same customers, suppliers and management, as the former Hyundai had. Moreover, Hyundai's operations at the former Hyundai facilities remain unchanged.

Therefore, since Hyundai's operations are essentially inclusive of Hyundai's

and LG's former operations, we preliminarily determine that Hyundai is the successor to both Hyundai and LG for purposes of this proceeding, and for the application of the antidumping law.

#### Fair Value Comparisons

To determine whether sales of DRAMs from Korea to the United States were made at less than fair value (LTFV), we compared the constructed export price (CEP) to the normal value (NV), as described in the CEP and NV sections of this notice, below. In accordance with section 771(16) of the Act, we considered all products as described in the "Scope of Review" section of this notice, above, that were sold in the home market in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of the identical or the most similar merchandise in the home market that were suitable for comparison, we compared U.S. sales to sales of the next most similar foreign like product, based on the characteristics listed in sections B and C of our antidumping questionnaire.

#### CEP

For Hyundai, in calculating United States price, the Department used CEP, as defined in section 772(b) of the Act, because the merchandise was first sold to an unaffiliated U.S. purchaser after importation. We calculated CEP based on delivered prices to unaffiliated customers in the United States.

We made deductions from the starting price, where appropriate, for discounts, rebates, billing adjustments, foreign and U.S. brokerage and handling, foreign inland insurance, export insurance, air freight, air insurance, U.S. warehousing expense, U.S. duties and direct and indirect selling expenses to the extent that they are associated with economic activity in the United States in accordance with sections 772(c)(2) and 772(d)(1) of the Act. These deductions included credit expenses and commissions, as applicable, and inventory carrying costs incurred by the respondent's U.S. subsidiaries. We added duty drawback received on imported materials, where applicable, pursuant to section 772(c)(1)(B) of the Act.

For DRAMs that were further manufactured into memory modules after importation, we deducted all costs of further manufacturing in the United States, pursuant to section 772(d)(2) of the Act. These costs consisted of the costs of the materials, fabrication, and general expenses associated with further manufacturing in the United States.

Pursuant to section 772(d)(3) of the Act, we also reduced the CEP by the amount of profit allocated to the expenses deducted under section 772(d)(1) and (2).

#### Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practical, we determined NV based on sales in the comparison market at the same LOT as the CEP sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than the CEP sales, we examined stages in the marketing process and selling activities along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We reviewed the questionnaire responses of Hyundai to establish whether there were sales at different LOTs based on the distribution system, selling activities, and services offered to each customer or customer category. For Hyundai, we identified one LOT in the home market with direct sales by the parent corporation to the domestic customer. These direct sales were made by the respondent to original equipment manufacturers (OEMs) and to distributors. In addition, all sales, whether made to OEM customers or to distributors, included the same selling functions. For the U.S. market, all sales for the respondents were reported as CEP sales. The LOT of the U.S. sales is determined for the sale to the affiliated importer rather than the resale to the unaffiliated customer. We examined the selling functions performed by the

Korean company for U.S. CEP sales (as adjusted) and preliminarily determine that they are at a different LOT from the Korean company's home market sales because the company's CEP transactions were at a less advanced stage of marketing. For instance, at the CEP level, the Korean company did not engage in any general promotion activities, marketing functions, or price negotiations for U.S. sales.

Because we compared CEP sales to home market sales at a more advanced LOT, we examined whether a LOT adjustment may be appropriate. In this case, the respondent only sold at one LOT in the home market. Therefore, there is no basis upon which the respondent can demonstrate a pattern of consistent price differences between LOTs. Further, we do not have information which would allow us to examine pricing patterns based on the respondent's sales of other products and there is no other record information on which such an analysis could be based. Because the data available do not provide an appropriate basis for making a LOT adjustment and the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP sales, a CEP offset is appropriate. We applied the CEP offset to adjusted home market prices or CV, as appropriate. The CEP offset consisted of an amount equal to the lesser of the weighted-average U.S. indirect selling expenses and U.S. commissions or home market indirect selling expenses. See the Memorandum on LOT for Hyundai, dated May 30, 2001.

## NV

### Home Market Viability

In order to determine whether there were sufficient sales of DRAMs in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the aggregate volume of home market sales of the foreign like products for Hyundai was greater than five percent of the respective aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for the respondent.

### Cost of Production (COP)

We disregarded Hyundai's sales found to have been made below the COP in the fifth administrative review, the most recent segment of this proceeding for which final results were available at the

time of the initiation of this review. See *Final Results 1999*. Accordingly, the Department, pursuant to section 773(b) of the Act, initiated a COP investigation of the respondent for purposes of this administrative review.

We calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, SG&A expenses, and the cost of all expenses incidental to placing the foreign like product in condition, packed, ready for shipment, in accordance with section 773(b)(3) of the Act. Consistent with previous reviews, we compared weighted-average quarterly COP figures for the respondent, adjusted where appropriate (see below), to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with sections 773(b)(1)(A) and (B) of the Act. See *Final Results 1999 and Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 65 FR 68976 (November 15, 2000). In accordance with section 773(b)(2)(D) of the Act, we conducted the recovery of cost test using annual cost data.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of home market sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit COP at the time of the sale were also below the weighted-average per-unit cost of production for the POR, in accordance with section 773(b)(2)(D) of the Act. If they were, we disregarded the below-cost sales in determining NV.

We found that for Hyundai, more than 20 percent of its home market sales for certain products were made at prices that were less than the COP. Furthermore, the prices did not permit the recovery of costs within a reasonable period of time. We, therefore, disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1). For those sales for which there were no comparable home market sales in the ordinary course of trade, we compared CEP to CV pursuant to section 773(a)(4) of the Act.

## Adjustments to COP

### Depreciation

Hyundai, consistent with the past review, increased the useful lives over which it depreciates certain assets. Our practice, pursuant to section 773(f)(1)(A) of the Act and the SAA at 834, is to use those accounting methods and practices that respondents have historically used. As this is the seventh review of this order, we do not consider it appropriate for the respondent to dramatically change the useful lives of its assets for antidumping purposes. We find that the useful lives that Hyundai adopted for certain assets in 1998 greatly exceed the useful lives that it has employed for these assets in the past. This is the second time since 1996 that the respondent has extended the useful lives of its assets. While the Department accepted the respondent's 1996 minor useful life adjustment, the useful lives that Hyundai adopted in 1998 are in some instances greater than fifty percent longer than the previous useful lives. See *Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order* 63 FR at 50870-50871 (September 23, 1998) (*Final Results 1998*). Moreover, we do not believe that the useful lives Hyundai previously employed were unreasonable, especially considering that the company itself argued that the previous useful lives were reasonable in *Final Results 1998*. We therefore adjusted Hyundai's reported depreciation expense using the pre-1998 useful lives.

## CV

In accordance with section 773(e) of the Act, we calculated CV based on the respondent's cost of materials and fabrication employed in producing the subject merchandise, SG&A expenses,

the profit incurred and realized in connection with the production and sale of the foreign like product, and U.S. packing costs. We used the cost of materials, fabrication, and G&A expenses as reported in the CV portion of the questionnaire response, adjusted as discussed in the COP section above. We used the U.S. packing costs as reported in the U.S. sales portion of the respondent's questionnaire responses. For selling expenses, we used the average of the selling expenses reported for home market sales that survived the cost test, weighted by the total quantity of those sales. For actual profit, we first calculated, based on the home market sales that survived the cost test, the difference between the home market sales value and home market COP, and divided the difference by the home market COP. We then multiplied this percentage by the COP for each U.S. model to derive an actual profit.

**Price Comparisons**

For price-to-price comparisons, we based NV on the price at which the foreign like product is first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade, in accordance with section 773(a)(1)(B)(i) of the Act. We compared the U.S. prices of individual transactions to the monthly weighted-average price of sales of the foreign like product.

With respect to both CV and home market prices, we made adjustments, where appropriate, for inland freight, inland insurance, duty adjustments, and discounts. We also reduced CV and home market prices by packing costs incurred in the home market, in accordance with section 773(a)(6)(B)(i) of the Act. In addition, we increased CV and home market prices for U.S. packing costs, in accordance with section 773(a)(6)(A) of the Act. We made further adjustments to home market prices, when applicable, to account for differences in physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. Additionally, pursuant to section 773(a)(6)(C)(iii) of the Act, we made an adjustment for differences in circumstances of sale by deducting home market direct selling expenses (credit expenses, royalty, and bank charges) and adding any direct selling expenses associated with U.S. sales not deducted under the provisions of section 772(d)(1) of the Act. Finally, we made a CEP offset adjustment to account for comparing U.S. and home market sales at different levels of trade.

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for May 1, 1999, through December 31, 1999:

Manufacturer/exporter	Percent margin
Hyundai Electronic Industries Co., Ltd .....	3.01
G5 Corporation .....	10.44
Jewon Microelectronics .....	10.44
Jae Won .....	10.44
Kim's Marketing .....	10.44
Techsan .....	10.44
Wooyang Industry Co., Ltd .....	10.44

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) a statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. Further, we would appreciate it if parties submitting written comments would provide the Department with an additional copy of the public version of any such comments on diskette. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department will not issue cash deposit instructions to Customs based on the results of this review. Since the revocation is currently in effect, current and future imports of DRAMs from Korea shall be entered into the United States without regard to antidumping duties. We have already instructed Customs to liquidate all entries as of January 1, 2000 without regard to antidumping duties.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisal instructions directly to Customs. The final results of this review shall be the

basis for the assessment of antidumping duties on entries of merchandise covered by the determination. We have calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales to the entered value of sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) of the Department's regulations 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 double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01-14381 Filed 6-6-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A-821-807]

**Continuation of Antidumping Duty Order: Ferrovandium and Nitrided Vanadium From Russia**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of continuation of antidumping duty order: ferrovandium and nitrided vanadium from Russia.

**SUMMARY:** On October 10, 2000, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 (c) of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on ferrovandium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of dumping (65 FR 60168). On May 23, 2001, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on ferrovandium and nitrided

vanadium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (66 FR 28540). Therefore, pursuant to 751(d)(2) of the Act and 19 CFR 351.218(e)(4), the Department is publishing this notice of the continuation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia.

**EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:**

Martha V. Douthit or James P. Maeder, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230; telephone: (202) 482-5050 or (202) 482-3330, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On June 5, 2000, the Department initiated (65 FR 35604), and the Commission instituted (65 FR 35668), a sunset review of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia, pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order revoked. See Final Results of Expedited Sunset Review of Antidumping Duty Order, Ferrovanadium and Nitrided Vanadium From Russia, 65 FR 60168 (October 10, 2000).

On May 23, 2001, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. See Ferrovanadium and Nitrided Vanadium From Russia, 66 FR 28540 (May 23, 2001) and USITC Publication 3420 (May 2001), Investigation No. 731-TA-702 (Review).

**Scope of the Order**

The merchandise subject to this order are ferrovanadium and nitrided vanadium, regardless of grade, chemistry, form or size, unless expressly excluded from the scope of this order. Ferrovanadium includes alloys containing ferrovanadium as the predominant element by weight (i.e., more weight than any other element,

except iron in some instances) and at least 4 percent by weight of iron. Nitrided vanadium includes compounds containing vanadium as the predominant element, by weight, and at least 5 percent, by weight, of nitrogen. Excluded from the scope of the order are vanadium additives other than ferrovanadium and nitrided vanadium, such as vanadium-aluminum master alloys, vanadium chemicals, vanadium waste and scrap, vanadium-bearing raw materials, such as slag, boiler residues, fly ash, and vanadium oxides.

The products subject to this order are currently classifiable under subheadings 2850.00.20, 7202.92.00, 7202.99.50.40, 8112.40.30.00, and 8112.40.60.00 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

**Determination**

As a result of the determination by the Department, and the Commission, that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on ferrovanadium and nitrided vanadium from Russia. The effective date of continuation of this order will be the date of publication in the **Federal Register** of this Notice of Continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of this order not later than May 2006.

Dated: May 31, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01-14379 Filed 6-6-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A-570-851]**

**Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to a timely request from Green Fresh Foods (Zhangzhou) Co., Ltd., on October 2,

2000, the Department of Commerce published a notice of initiation of a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China with respect to the above-mentioned exporter. The period of review is February 1, 2000, through July 31, 2000. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 65 FR 58735 (October 2, 2000).

As a result of this review, the Department of Commerce has preliminarily determined that a dumping margin exists for exports of the subject merchandise for the covered period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their arguments (1) a statement of the issues and (2) a brief summary of the arguments.

**EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:**

David J. Goldberger or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-4136 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. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

**Background**

On February 19, 1999, the Department published in the **Federal Register** (64 FR 8308) an antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). On August 31, 2000, the Department received a timely request from Green Fresh Foods (Zhangzhou) Co. (Green Fresh), in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(c), for a new shipper review of this antidumping duty order.

On September 22, 2000, the Department initiated a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC (see *Certain Preserved Mushrooms from the People's Republic of China: Initiation of New Shipper*

*Antidumping Duty Review*, 65 FR 58735 (October 2, 2000)). On September 28, 2000, the Department issued the antidumping questionnaire to Green Fresh. We received responses to the antidumping questionnaire on October 19, 2000, and December 11, 2000.

On December 18, 2000, the Department provided the parties an opportunity to submit publicly available information for consideration in these preliminary results.

The Department issued a supplemental questionnaire to Green Fresh on January 9, 2001, and received a response on February 9, 2001.

We conducted verification of Green Fresh and its affiliated producer, Zhang Zhou Longhai Lubao Food Co., Ltd. (Lubao) on March 14 and 15, 2001. We issued a verification report on April 17, 2001.

### Scope of the Order

The products covered by the order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under the order are the species *Agaricus bisporus* and *Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of the order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of the order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified," or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.<sup>1</sup>

The merchandise subject to the order is classifiable under subheadings

2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

### Separate Rates

In proceedings involving non-market economy (NME) countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. In this case, Green Fresh has requested a separate company-specific rate. Green Fresh is owned by a holding company, Zhangzhou Longhai Lubao Can Foods Co., Ltd. (Longhai), and a U.S. citizen. Longhai is owned by three individuals in the PRC.

The Department's separate rate test to determine whether a company engages in export activities independent of government control is not concerned, in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on government controls over export-related investment, pricing, and production decisions at the individual firm level. See e.g., *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997); and *Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control in its export activities to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) and amplified in the *Final Determination of Sales at Less than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under the separate rates criteria, the Department assigns separate rates in NME cases only if respondents can

demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

#### 1. Absence of De Jure Control

In prior PRC cases, the Department has analyzed laws provided by respondents to demonstrate absence of *de jure* control, such as the "Foreign Trade Law of the People's Republic of China" and the "Company Law of the People's Republic of China" (see Memo to the File dated May 23, 2001, placed on the record of this review), and found that such PRC laws establish an absence of *de jure* control. See, e.g., *Notice of Final Determination of Sales at Less than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China*, 60 FR 54472 (October 24, 1995); see also *Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China*, 60 FR 22544 (May 8, 1995) (*Furfuryl Alcohol*). We have no new information in this proceeding which would cause us to conclude that these laws do not apply to Green Fresh.

Accordingly, we preliminarily determine that, within the PRC preserved mushroom industry, the aforementioned laws of the PRC demonstrate an absence of *de jure* government control over export pricing and marketing decisions of Green Fresh.

#### 2. Absence of De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See *Silicon Carbide*, 59 FR at 22587 and *Furfuryl Alcohol*, 60 FR at 22545. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of

<sup>1</sup> On June 19, 2000, the Department affirmed that "marinated," "acidified," or "pickled" mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. See "Recommendation Memorandum-Final Ruling of Request by Tak Fat, et al. for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China."

losses. See *Silicon Carbide*, 59 FR at 22587 and *Furfuryl Alcohol*, 60 FR at 22545.

Green Fresh asserted the following: (1) It establishes its own export prices; (2) it negotiates contracts without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and obtain loans. Furthermore, our analysis of Green Fresh's questionnaire responses reveals no information indicating government control. This information supports a preliminary finding that there is an absence of *de facto* governmental control of Green Fresh's export functions. Consequently, we preliminarily determine that Green Fresh has met the criteria for the application of a separate rate.

#### Fair Value Comparisons

To determine whether the sale of the subject merchandise by Green Fresh to the United States was made at less than normal value, we compared the export price to the normal value, as described in the "Export Price" and "Normal Value" sections of this notice, below.

#### Export Price

We used export price methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

We calculated export price based on a packed, free on board Xiamen, PRC, price to the first unaffiliated purchaser in the United States. Where appropriate, we made a deduction from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME entities or paid for in a NME currency, we based those charges on surrogate rates from India (see "Surrogate Country" section below). To value foreign inland trucking charges and foreign brokerage and handling expenses and/or port loading charges, we used November 1999 Indian freight companies' and freight forwarders' price quotes, respectively, obtained by the Department in other antidumping duty proceedings.

#### Normal Value

##### A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Any determination that a foreign country is a NME country shall remain in effect until revoked by the Department (see section 771(18)(c) of the Act). None of the parties to this proceeding has contested such treatment. Accordingly, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries.

##### B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that: (1) are at a level of economic development comparable to that of the NME, and (2) are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka, and the Philippines are countries comparable to the PRC in terms of overall economic development and are significant producers of the subject merchandise (see Memorandum dated December 4, 2000). According to the available information on the record, we have determined that India meets the statutory requirements for an appropriate surrogate country for the PRC. Accordingly, we have calculated normal value using Indian values for the PRC producer's factors of production. We have obtained and relied upon publicly available information wherever possible.

##### C. Factors of Production

In accordance with section 773(c) of the Act, we calculated normal value based on factors of production reported by Lubao which produced preserved mushrooms for Green Fresh which in turn sold them to the United States during the POR. To calculate normal value, the reported unit factor quantities were multiplied by publicly available Indian values, except as noted below.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. Wherever possible and appropriate, we used non-producer-specific prices in accordance with the preamble to the Department's regulations, *Antidumping Duties; Countervailing Duties; Final Rule*, at 62 FR 27296, 27366 (May 19, 1997). As appropriate, we adjusted input prices to reflect delivered values. Where the producer did not report the distance between the material supplier and the

factory, as facts available, we used the distance to the nearest seaport because an import value was used as the surrogate value for the factor. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. A complete analysis of the surrogate values may be found in the Preliminary Determination Valuation Memorandum from the Team to the File (Preliminary Determination Valuation Memorandum), dated May 31, 2001.

We valued the major material inputs used in the production of the subject merchandise using the following sources. For fresh mushrooms, we used the simple average of the fresh mushrooms prices quoted in the Indian publication *The Economic Times* during the POR. We revised the average calculated by Green Fresh to include the daily high price. We valued cans and lids using the per-piece value derived from the notes to the Indian producer Agro Dutch Industries, Ltd.'s 1999–2000 financial statement. Because the surrogate value is for a complete can set (can and lid), we applied the value only to the can consumption factor to avoid double-counting.

For agricultural inputs, such as spawn, cow manure, and straw, we derived unit values from Agro Dutch's 1999–2000 financial statement and notes.

We valued salt and citric acid based on the 1998–1999 financial statement of the Indian producer Weikfield Agro Products Ltd. We valued labels and glue based on the weighted-average unit values derived from the *Monthly Trade Statistics of Foreign Trade of India, Volume II—Imports*. We did not value water separately because, consistent with our methodology in the 1998–2000 reviews, we believe that the costs for water are included as factory overhead in the Indian financial statements used to calculate factory overhead, selling, general and administrative (SG&A) expenses, and profit.

We valued gypsum based on the unit value derived from relevant data in Weikfield's and Saptarishi Agro's 1998–1999 financial statements. We based the surrogate values for calcareous (calcium carbonate or chalk) and carbamide (urea) on the average unit prices for the material quoted in the Indian publication *Chemical Weekly* from February through July 2000. Because the average domestic price includes Indian excise tax, we adjusted the average value by subtracting the 18% excise tax, based on the methodology applied to

values from the same source in the 1999–2000 investigation of *Synthetic Indigo from the PRC*. We valued calcium phosphate using U.S. prices quoted in the U.S. publication *Chemical Marketing Reporter* for “Calcium Phosphate, dibasic, feed grade, 18.5% P. bulk” in October and December 1999.

We valued packing materials, including cardboard boxes, packing tape, and packing paper, using the weighted-average unit values derived from the Indian Import Statistics, August and December 1998.

We valued labor based on a regression-based wage rate in accordance with 19 CFR 351.408(c)(3).

To value electricity, we used the average rupees/kilowatt hour rate derived from the 1998–1999 financial statements of four Indian preserved-mushroom producers. We based the value of coal on the weighted average of rates obtained from two sources: (1) the rupees/metric ton rate of “Coal (for steam raising)” published in the 1998–1999 annual report for the Indian company Polychem, Ltd.; and (2) the 1998 weighted-average unit value for Indian imports of Bituminous coal, not agglomerated from the Commodity Trade Statistics published by the United Nations Statistics Division.

We based our calculation of factory overhead (including water), SG&A expenses, and profit using ratios derived from financial statements of three Indian producers of the subject merchandise whose production and sales activity is comprised mostly of preserved mushrooms and other food products and who were profitable during the POR.

To value truck freight rates, we used the average of November 1999 Indian freight companies’ price quotes discussed in the “Export Price” section above.

The United States Court of Appeals for the Federal Circuit’s (CAFC’s) decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (CAFC 1997) requires that we revise our calculation of source-to-factory surrogate freight for those material inputs that are based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from (1) the closest PRC port to the factory or (2) the domestic supplier to the factory, on an import-specific basis.

### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the weighted-average dumping margin for

the January 31, 2000, through July 31, 2000, POR is as follows:

Manufacturer/Producer/Exporter	Margin percent
Green Fresh Foods Zhangzhou Co., Ltd .....	31.10

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. See 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication. See 19 CFR 351.310(c). If requested, a hearing will be held 44 days after the publication of this notice, or the first workday thereafter.

Issues raised in any hearing will be limited to those raised in the respective case briefs and rebuttal briefs. See 19 CFR 351.310(c). Case briefs from interested parties and rebuttal briefs, limited to the issues raised in the respective case briefs, may be submitted not later than 30 days and 37 days, respectively, from the date of publication of these preliminary results. See 19 CFR 351.309(c) and (d). Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

The Department will issue the final results of this new shipper review, including the results of its analysis of issues raised in any written briefs or at the hearing, if held, not later than 90 days after the date on which the preliminary results are issued.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 30 days of the date of publication of this notice. Requests should contain: (1) The party’s name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.

In accordance with 19 CFR 351.301(c)(3)(ii), interested parties may submit additional publicly available information to value the factors of production for the final results of this review until 20 days after publication of these results, unless a written request for an extension is received and granted.

### Assessment Rates

Upon completion of this new shipper review, the Department shall determine,

and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisal instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (i.e., less than 0.50 percent). For assessment purposes, we intend to calculate an entry-specific ad valorem duty assessment rate for Green Fresh, whose sale and entry under review occurred in different PORs, based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entry for 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 double antidumping duties.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC manufacturers or exporters will continue to be 198.63 percent, the “PRC-Wide” rate made effective by the LTFV investigation; and (4) for all non-PRC exporters, the cash deposit rate will continue to be 198.63 percent, the “PRC-Wide” rate made effective by the

LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This new shipper review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: May 31, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01-14380 Filed 6-6-01; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-831]

#### **Stainless Steel Plate in Coils From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review of stainless steel plate in coils from the Republic of Korea.

**SUMMARY:** The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on stainless steel plate in coils from the Republic of Korea in response to a request from respondent, Pohang Iron & Steel Co., Ltd. ("POSCO"). This review covers imports of subject merchandise from POSCO. The period of review ("POR") is November 4, 1998 through April 30, 2000.

Our preliminary results of review indicate that respondent POSCO has sold subject merchandise at less than normal value ("NV") during the POR. If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on suspended entries for POSCO.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding should also submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander, Laurel LaCivita or Rick Johnson, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0182, (202) 482-4243 or (202) 482-3818, respectively.

#### **SUPPLEMENTARY INFORMATION:**

##### **The Applicable Statute and Regulations**

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's regulations are to the regulations codified at 19 CFR part 351 (2000).

##### **Background**

On May 16, 2000, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on stainless steel plate in coils from the Republic of Korea (65 FR 31141). On May 31, 2000, petitioners (Allegheny Ludlum, AK Steel Corporation (formerly Armco, Inc.), J&L Specialty Steel, Inc., North American Stainless, Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL-CIO/CLC) and POSCO, a producer and exporter of subject merchandise during the POR, in accordance with 19 CFR 351.213(b)(1) and 19 CFR 351.213(b)(2), respectively, requested an administrative review of the antidumping order covering the period November 4, 1998, through April 30, 2000. On July 7, 2000, the Department published in the **Federal Register** a notice of initiation of administrative review of this order (65 FR 41942).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit. On December 18, 2000, the Department extended the time limit for the preliminary results in this review to March 19, 2001. *See Stainless Steel Plate in Coils From the Republic of Korea: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review*, 65 FR 81488 (December 26, 2000). On March 7, 2001, the Department extended the time limit for the preliminary and final results in this review. The preliminary results are now due on May 31, 2001. The final results are due 180 days after the date of the publication of the

preliminary results. *See Stainless Steel Plate in Coils From the Republic of Korea: Extension of Time Limit for the Preliminary and Final Results of the Antidumping Duty Administrative Review*, 66 FR 14891 (March 14, 2001).

The Department is conducting this administrative review in accordance with section 751 of the Act.

##### **Verification**

As provided in section 782(i) of the Act, we verified sales and cost information provided by POSCO, from February 2, 2001, to February 14, 2001, and February 19, 2001, to February 23, 2001, respectively, using standard verification procedures, including an examination of relevant sales, cost, and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report and are on file in the Central Records Unit ("CRU") located in room B-099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

##### **Scope of the Review**

The product covered by this order is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (e.g., cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of this order is the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of this order. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60,

7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of the orders is dispositive.

#### Normal Value Comparisons

To determine whether POSCO's sales of subject merchandise from South Korea to the United States were made at less than fair value, we compared the constructed export price ("CEP") to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual CEP transactions. We made corrections to reported U.S. and home market sales data based on the Department's findings at verification, as appropriate.

#### Transactions Reviewed

We compared the aggregate volume of POSCO's home market sales of the foreign like product and U.S. sales of the subject merchandise to determine whether the volume of the foreign like product POSCO sold in South Korea was sufficient, pursuant to section 773(a)(1)(C) of the Act, to form a basis for NV. Because POSCO's volume of home market sales of the foreign like product was greater than five percent of its U.S. sales of subject merchandise, in accordance with section 773(a)(1)(B)(i) of the Act, we have based the determination of NV upon POSCO's home market sales of the foreign like product. Thus, we based NV on the prices at which the foreign like product was first sold for consumption in South Korea, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade ("LOT") as the CEP sales.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all products covered by the *Scope of the Review* section above, which were produced and sold by the POSCO in the home market during the POR, to be foreign like products for purposes of determining appropriate comparisons to U.S. sales. Where there were no sales of identical merchandise in the home

market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's questionnaire.

#### Export Price and Constructed Export Price

In accordance with section 772(a) of the Act, export price is the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c). In accordance with section 772(b) of the Act, constructed export price is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d). For purposes of this review, POSCO has classified its sales as export price ("EP") sales. However, after an analysis of POSCO's information on the record, we preliminarily determine that POSCO's sales should be classified as constructed export price sales.

POSCO identified two channels of distribution for U.S. sales. For U.S. sales channel one (*i.e.*, POSCO sales through Pohang Steel America Corp. ("POSAM")), POSCO's wholly owned U.S. subsidiary, to an unaffiliated customer in the United States) and for U.S. sales channel two (*i.e.*, POSCO sales through POSCO Steel Sales & Services Co., Ltd. ("POSTEEL"), POSCO's affiliated trading company in South Korea, to POSAM, POSCO's wholly owned U.S. subsidiary, and finally, to an unaffiliated customer in the United States), we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act, for those sales to the first unaffiliated purchaser that took place after importation into the United States.

As noted above, POSCO has indicated that sales through channels one and two should be treated as EP sales. Based on the information on the record, however, we preliminarily determine that such sales are CEP sales. First, POSCO stated that POSAM, and not POSCO, bears the credit risk on all subject sales to the unaffiliated U.S. customers. *See* POSCO's October 2, 2000, Section A

supplemental questionnaire response, at 15. Second, POSAM takes title to the subject merchandise and, when it sold the subject merchandise to the unaffiliated U.S. customer, POSAM issued an invoice to the U.S. customer. *See* POSCO's October 2, 2000, Section A supplemental questionnaire response, at 10. Based upon all the information on the record, we find that sales in both channels must be considered as having taken place in the United States. These facts were also present in the original less than fair value investigation in which we determined POSCO's sales through POSAM to be CEP sales (*see Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils ("SSPC") from the Republic of Korea*, 64 FR 15443, 15453 (March 31, 1999)). Therefore, we determine that POSCO's sales are appropriately classified as CEP sales.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and Korean customs clearance fees, international freight, marine insurance, U.S. customs duty, and U.S. brokerage and wharfage expenses (classified as other U.S. transportation expenses). Also, in accordance with section 772(c)(2)(A) of the Act, we deducted packing expenses because packing expenses are included in the constructed export price. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses, postage and term credit expenses, and letter of credit and remittance expenses) and indirect selling expenses, including inventory carrying costs. For POSAM's indirect selling expenses, we adjusted POSCO's imputed credit expense calculation to include only the sum of POSAM's imputed credit expenses as an offset, as reported in POSCO's Section C U.S. sales database. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act.

#### Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-

Constructed Value ("CV") Comparison" sections of this notice.

### Cost of Production ("COP") Analysis

Because the Department determined that POSCO made sales in the home market at prices below the cost of producing the subject merchandise in the investigation and therefore excluded such sales from normal value (*see, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15446 (March 31, 1999)), the Department determined that there are reasonable grounds to believe or suspect that POSCO made sales in the home market at prices below the cost of producing the merchandise in this review. *See* section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on July 10, 2000, to determine whether POSCO made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

We conducted the COP analysis described below.

#### A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of POSCO's cost of materials and fabrication for the foreign like product, plus amounts for home market selling, general and administrative expenses ("SG&A"), interest expenses, and packing costs. We used home market sales and COP information provided by POSCO in its questionnaire responses, with the following exceptions:

1. POSCO purchased a major input from an affiliate and used the input's transfer prices in its calculation of COP and CV. For the preliminary results, we have increased the transfer price of these purchases to a market price in accordance with section 773(f)(2) and (3) of the Act. This major input is business proprietary information. *See* the May 31, 2001, memo to Neal Halper, Director, Office of Accounting (proprietary version).

2. In 1999, POSCO wrote off all of its deferred foreign exchange losses through retained earnings. POSCO originally capitalized these losses with the intention of recognizing the loss over time on its income statement. Subsequently, POSCO expensed these deferred losses directly to equity in 1999. Therefore, we adjusted POSCO's reported COP to include the entire amount of the remaining deferred foreign exchange losses. *See* the May 31, 2001, memo to Neal Halper, Director,

Office of Accounting (proprietary version).

3. We adjusted POSCO's reported foreign exchange ratio to include gains and losses associated with cash and "other" accounts in the numerator. *See* the May 31, 2001, memo to Neal Halper, Director, Office of Accounting (proprietary version).

#### B. Test of Home Market Prices

We compared the weighted-average COP from January 1, 1999, through March 31, 2000 ("cost reporting period") for POSCO, adjusted where appropriate (*see* above), to its home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) within an extended period of time, such sales were made in substantial quantities; and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time.

#### C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product within an extended period of time are at prices less than the COP, we do not disregard any below-cost sales of that product because the below-cost sales are not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the extended period are at prices less than the COP, we determine such sales to have been made in "substantial quantities." *See* section 773(b)(2)(C)(i) of the Act. The extended period of time for this analysis is the POR. *See* section 773(b)(2)(B) of the Act. Because each individual price was compared against the weighted average COP for the cost reporting period, any sales that were below cost were also at prices which did not permit cost recovery within a reasonable period of time. *See* section 773(b)(2)(D). We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

#### D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated POSCO's CV based on the sum of POSCO's cost of materials, fabrication, SG&A, interest expenses and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of

COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by POSCO in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

#### Price-to-Price Comparisons

We based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We calculated NV based on the home market prices to unaffiliated home market customers. We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse, warehousing expense, and inland freight from either plant/distribution warehouse to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments or deductions for credit, warranty expense and interest revenue, where appropriate. In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Also, we added to NV an amount for duty drawback.

#### Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find suitable home market sales of the foreign like product. Where applicable, we would make adjustments to CV in accordance with section 773(a)(8) of the Act. We did not use CV for POSCO for these preliminary results of review.

#### Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the affiliated importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of

distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In the present review, POSCO requested a LOT adjustment or a CEP offset if the Department determines that POSCO's sales through POSAM are CEP sales. (As noted above, we have preliminarily determined that all of POSCO's U.S. sales through POSAM are CEP sales.) To determine whether an adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and South Korean markets, including the selling functions, classes of customer, and selling expenses.

In both the home market ("HM") and U.S. market, POSCO reported one level of trade. See POSCO's August 14, 2000, Section A response, at A-11-12. POSCO sold through two channels of distribution in the HM: (1) Directly from its mill to unaffiliated end-users/OEM's and affiliated and unaffiliated service centers; and (2) through POSTEEL to unaffiliated end-users/OEM's and unaffiliated service centers. POSCO sold through two channels of distribution in the U.S. market: (1) Through POSAM to unaffiliated trading companies; and (2) through POSTEEL to POSAM, and then to unaffiliated trading companies.

For sales in HM channel one, POSCO performed all sales-related activities, including arranging for freight and delivery; providing computerized accounting and sales systems; market research; warranty; sales negotiation; after-sales service; quality control; and extending credit. The same selling functions were performed in HM channel two; however, it was POSTEEL, not POSCO, which performed all the major selling functions. Because these selling functions are similar for both sales channels, we preliminarily

determine that there is one LOT in the home market.

For U.S. sales through either channel one or two, POSCO or POSTEEL performed many of the same major selling functions, such as freight and delivery; market research; warranty; sales negotiation; after-sales service; and quality control. In addition, for all U.S. sales, POSAM performed several sales-related activities, such as invoicing customers; extending credit; acting as importer of record; and paying U.S. Customs duties and wharfage. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the U.S. market.

Based on our analysis of the selling functions performed for sales in the HM and CEP sales in the U.S. market, we preliminarily determine that, despite the additional selling functions (*i.e.*, serving as importer of record, paying U.S. Customs duties and wharfage, arranging import documents) performed by POSAM on POSCO's U.S. sales, there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Therefore, a LOT adjustment or CEP offset is not appropriate.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for the period November 4, 1998 through April 30, 2000:

Manufacturer/exporter/reseller	Margin (percent)
POSCO .....	1.56

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to this proceeding in accordance with 19 CFR 351.224(b). An interested party may request a hearing within 30 days of publication of these preliminary results. See 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. Further, we would appreciate it if parties submitting written comments also provide the Department with an additional copy of

those comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of these preliminary results.

**Assessment**

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period. Upon completion of this review, the Department will issue appraisal instructions directly to the Customs Service.

**Cash Deposit**

The following cash deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results of administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate listed above (except that if the rate for a particular product is de minimis, *i.e.*, less than 0.5 percent, a cash deposit rate of zero will be required for that company); (2) for previously 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 the "all others" rate of 16.26 percent, which is the all others rate established in the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

**Notification to Interested Parties**

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) 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 the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the 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.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 31, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

[FR Doc. 01-14382 Filed 6-6-01; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

**SUMMARY:** The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period January 1, 2001 through March 31, 2001. We are publishing the current listing of those subsidies that we have determined exist. **EFFECTIVE DATE:** June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** Tipten Troidl, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482-2786.

**SUPPLEMENTARY INFORMATION:** Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject

to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on cheeses that were imported during the period January 1, 2001 through March 31, 2001.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: May 31, 2001.

**Faryar Shirzad,**

*Assistant Secretary for Import Administration.*

**APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY**

Country	Program(s)	Gross <sup>1</sup> Subsidy (\$/lb)	Net <sup>2</sup> Subsidy (\$/lb)
Austria .....	European Union Restitution Payments .....	0.14	0.14
Belgium .....	EU Restitution Payments .....	0.05	0.05
Canada .....	Export Assistance on Certain Types of Cheese .....	0.23	0.23
Denmark .....	EU Restitution Payments .....	0.05	0.05
Finland .....	EU Restitution Payments .....	0.17	0.17
France .....	EU Restitution Payments .....	0.10	0.10
Germany .....	EU Restitution Payments .....	0.08	0.08
Greece .....	EU Restitution Payments .....	0.00	0.00
Ireland .....	EU Restitution Payments .....	0.06	0.06
Italy .....	EU Restitution Payments .....	0.10	0.10
Luxembourg .....	EU Restitution Payments .....	0.07	0.07
Netherlands .....	EU Restitution Payments .....	0.04	0.04
Norway .....	Indirect (Milk) Subsidy .....	0.28	0.28
	Consumer Subsidy .....	0.13	0.13
Total .....	.....	0.41	0.41
Portugal .....	EU Restitution Payments .....	0.05	0.05
Spain .....	EU Restitution Payments .....	0.04	0.04
Switzerland .....	Deficiency Payments .....	0.16	0.16

APPENDIX—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY—Continued

Country	Program(s)	Gross <sup>1</sup> Subsidy (\$/lb)	Net <sup>2</sup> Subsidy (\$/lb)
U.K. ....	EU Restitution Payments .....	0.06	0.06

<sup>1</sup> Defined in 19 U.S.C. 1677(5).

<sup>2</sup> Defined in 19 U.S.C. 1677(6).

[FR Doc. 01-14378 Filed 6-6-01; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description of each trade mission, obtain a copy of the mission statement from the Project Officer indicated for each mission below. Recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Information Technology & E-commerce Trade Mission to Southeast Asia  
Vietnam, Malaysia and the Philippines

July 31–August 9, 2001

Recruitment Closes on June 29, 2001.

*For further information contact:* Ms. Tu-Trang Phan, U.S. Department of Commerce. Telephone 202-482-0480; or e-Mail: Tu-Trang\_Phan@ita.doc.gov

Textile Trade Mission to Mexico, Mexico City and Guadalajara  
September 24–28, 2001

Recruitment closes on August 10, 2001.

*For further information contact:* Ms. Pamela Kirkland, U.S. Department of Commerce. Telephone 202-482-3587; or e-Mail: Pamela\_Kirkland@ita.doc.gov

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Nisbet, U.S. Department of Commerce. Telephone 202-482-5657, or e-Mail Tom\_Nisbet@ita.doc.gov

Dated: June 1, 2001.

**Thomas H. Nisbet,**

*Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.*

[FR Doc. 01-14358 Filed 6-6-01; 8:45 am]

BILLING CODE 3510-DR-U

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[I.D. 052901A]

**Endangered and Threatened Species; Take of Anadromous Fish**

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

**ACTION:** Receipt of applications for scientific research permits (1317, 1318, 1319, 1320, and 1321) and receipt of an application to modify permit (1175).

**SUMMARY:** NMFS has received new applications for permits for takes of threatened species for the purposes of scientific research and/or enhancement under the Endangered Species Act (ESA) from the Biological Services Division of the U.S. Geological Survey (USGS) in Cook, WA; the Fish Division of the Oregon Department of Fish and Wildlife (ODFW) in Portland, OR; Georgia-Pacific West (GPW) in Bellingham, WA; the town of Marysville, WA; and Mr. Kenneth Witty, a fisheries consultant from Enterprise, OR, working on a project for the U.S. Bureau of Reclamation. In addition, the Gifford Pinchot National Forest (GPNF), in Vancouver WA, is seeking to modify a previous permit (1175) that NMFS originally granted in 1998.

**DATES:** Comments or requests for a public hearing on any of the new applications or the modification request must be received no later than 5 p.m. Pacific daylight time on July 9, 2001.

**ADDRESSES:** Written comments on the new applications or the modification request should be sent to Protected Resources Division (PRD), F/NW03, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737 (phone: 503-230-5400). Comments may also be sent via fax to 503-230-5435. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Rob Clapp, Portland, OR at phone: 503-231-2314, Fax: 503-230-5435, e-mail: Robert.Clapp@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The following ESA-listed species and evolutionarily significant units (ESUs) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): Threatened Lower Columbia River (LCR); Threatened Upper Willamette River (UWR); and Threatened Puget Sound (PS).

Chum Salmon (*O. nerka*): Threatened Columbia River (CR).

Coho salmon (*O. kisutch*): Threatened Oregon Coast (OC).

Steelhead (*O. mykiss*): Threatened LCR; Threatened Middle Columbia River (MCR); and Threatened UWR.

**New Applications Received**

The USGS is seeking a 5-year permit (1317) to take (capture and handle) juvenile MCR steelhead during scientific research efforts on the Toppenish National Wildlife Refuge (TNWR), Toppenish Creek, WA. Toppenish Creek is a tributary of the Yakima River. The purpose of the study is to determine whether juvenile MCR steelhead are entering the TNWR's wetland management units during the spring flooding of Toppenish creek and becoming trapped there—thus becoming vulnerable to avian predators, high summer water temperatures, and stranding. The study will benefit MCR steelhead by showing whether they are straying into the wetland management units and managing to escape back to Toppenish Creek to continue their downstream migration. If the juvenile MCR steelhead are being trapped in the management units by falling water levels, the study will also be used to help guide TNWR operations so that the fish are less likely to be harmed in the future. The USGS proposes to capture, handle, and release juvenile MCR steelhead. Baited minnow traps will be the primary capture method, but fyke nets or electrofishing may be used if the traps are not successful.

The ODFW is seeking a 5-year permit (1318) to annually take LCR chinook salmon, UWR chinook salmon, Oregon Coast coho salmon, LCR steelhead, and UWR steelhead during the course of conducting five separate scientific research projects. Only juveniles will be taken in these projects—except for

Project 3, for which the ODFW is requesting a permit to handle and release up to five adult MCR steelhead.

*Project 1.* The purpose of Project 1 is to determine the effects that bank treatment and near-shore development have on anadromous and resident fish in the lower Willamette River. The ODFW proposes to capture, handle, and release juvenile LCR and UWR chinook salmon. These fish will be captured with beach seines and (possibly) by mid-water trawls, gill nets, and boat electrofishing. The ODFW requests a permit for a small amount of indirect mortality that may be associated with these activities. The project will benefit listed salmon by providing new information on the lower Willamette River ecosystem which, in turn, will help guide future waterway management and development in the Willamette and other river basins.

*Project 2.* The purpose of Project 2 is to determine trends in warmwater fish communities and answer long-term management questions for warmwater species statewide. The ODFW requests permission to capture, handle, and release juvenile LCR and UWR chinook, juvenile UWR and LCR steelhead, and juvenile OC coho while conducting boat electrofishing transects in warm- and backwater habitats. The ODFW requests a permit for a small amount of indirect mortality that may be associated with these activities. The project will benefit listed salmonids by providing information on fish population structures and species interactions that will be used to design and implement management actions that conserve and protect listed species.

*Project 3.* The purpose of Project 3 is to estimate population numbers and record individual fish metrics among redband trout in the Deschutes River, OR. The ODFW requests permission to capture, handle and release juvenile and adult MCR steelhead while conducting boat electrofishing transects for redband trout in the Deschutes River. The ODFW requests a permit for a small amount of indirect juvenile mortality that may be associated with these activities. They are also seeking a permit that would allow them a small amount of annual incidental—and non-lethal—take of adult MCR steelhead. The project will benefit listed salmonids by helping assess the health of the fish community in the lower 100 miles of the Deschutes River and by helping managers determine if fluctuations in local anadromous fish populations are the result of mortality occurring during the freshwater stages of their life cycles.

*Project 4.* The purpose of Project 4 is to determine whether spring chinook

salmon are naturally reproducing in the Mohawk River system (a tributary to the McKenzie River). The ODFW requests permission to capture, handle and release juvenile UWR chinook while conducting boat electrofishing transects and, possibly, seining and backpack electrofishing in the Mohawk River. The ODFW requests a permit for a small amount of indirect mortality that may be associated with these activities. The project will benefit listed salmonids by determining if naturally-reproducing populations of chinook have been reestablished in the area—thus allowing managers to take them into account in future decisions.

*Project 5.* The purpose of Project 5 is to conduct a genetic characterization of rainbow trout in the McKenzie River—a tributary to the UWR. The ODFW requests permission to capture, handle, and release juvenile UWR chinook while conducting boat electrofishing transects for rainbow trout on the McKenzie River. The ODFW requests a permit for a small amount of indirect mortality that may be associated with these activities. The project will benefit listed salmon by helping document the distribution, abundance, and condition of UWR chinook.

GPW is seeking a 5-year permit (1319) to annually take juvenile, naturally produced and artificially propagated PS chinook salmon associated with scientific research to be conducted at a log pond located at the mouth of the Whatcom Waterway. The purpose of this study is to monitor the biological effectiveness of a sediment cap placed over the surface of the log pond. GPW proposes to capture (using beach seines), handle, and release juvenile PS chinook salmon. GPW also requests a permit for a small amount of indirect mortality that may be associated with the study. The research will benefit listed species by yielding information that managers will use to determine if the cap placement helps habitat recovery.

The City of Marysville, WA, is seeking a 3-year permit (1320) to annually take juvenile, naturally produced and artificially propagated PS chinook salmon associated with scientific research to be conducted in a 13-acre intertidal wetland created in the Snohomish River estuary. The purpose of this study is to monitor the wetland's effectiveness as estuarine habitat for salmonids and other fish species and determine its overall functional value. The City of Marysville proposes to capture (using beach seines and dip nets), handle, and release juvenile PS chinook salmon. The research will benefit PS chinook by yielding

information that will help determine the value of this type of habitat restoration.

Mr. Kenneth Witty is seeking a 5-year permit to annually take threatened MCR juvenile steelhead during the course of scientific research in the Yakima River basin in Washington State. Mr. Witty proposes to capture (using backpack electrofishing equipment), handle, tag, and release juvenile MCR steelhead. The purpose of the research is to study fish communities in the irrigation drainage networks of the lower Yakima River basin and determine—among other pieces of information—the extent to which threatened steelhead inhabit those networks. Mr. Witty also requests that the permit allow a small amount of indirect juvenile steelhead mortality that may be associated with these activities. The research will benefit threatened MCR steelhead by giving Federal managers data on where the fish are in the Yakima basin irrigation system—thus helping them make decisions about how to run the system in a way that conserves the species.

#### **Modification Requests Received**

In 1998, NMFS issued a 5-year permit (1175) to the GPNF that authorized takes of adult and juvenile LCR steelhead for the purpose of scientific research. NMFS has received a request to amend the application by allowing adult and juvenile LCR chinook salmon, juvenile, naturally produced and artificially propagated PS chinook salmon, and adult CR chum salmon to be taken. The adult fish would simply be observed; the juvenile fish would be captured, handled, and released. The GPNF also requests that the permit allow a small amount of indirect juvenile LCR and PS chinook salmon mortality that may be associated with research activities. The purpose of the research is to conduct fish distribution and habitat quality surveys across the GPNF and evaluate the biological benefits of habitat improvement projects. The research will benefit listed species by yielding information that will be used in broad-scale analyses and project level planning to protect high-value habitat and restore degraded habitat.

Dated: June 1, 2001.

#### **Phil Williams,**

*Acting Chief, Endangered Species Division,  
Office of Protected Resources, National  
Marine Fisheries Service.*

[FR Doc. 01-14405 Filed 6-6-01; 8:45 am]

**BILLING CODE 3510-22-S**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[I.D. 051101B]

**Notice of Availability of Draft Stock Assessment Reports**

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS revised the Alaska, Atlantic and Gulf of Mexico, and Pacific marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act (MMPA). Draft 2001 reports are available for public review and comment.

**DATES:** Comments must be received by September 5, 2001.

**ADDRESSES:** Send comments or requests for printed copies of the draft reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301-713-0376. NMFS will not accept comments submitted via e-mail or Internet. Copies of the regional reports may also be requested from Robyn Angliss, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115-0070 (Alaska); Janeen Quintal, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Northwest Atlantic); Steven Swartz, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149 (Mid-Atlantic and Gulf of Mexico); and Tim Price, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802-4213 (Pacific).

**FOR FURTHER INFORMATION CONTACT:**

Emily Hanson, Office of Protected Resources, 301-713-2322, ext. 101, e-mail Emily.Hanson@noaa.gov; Robyn Angliss 206-526-4032, e-mail Robyn.Angliss@noaa.gov, regarding Alaska regional stock assessments; Janeen Quintal, 508-495-2252, e-mail Janeen.Quintal@noaa.gov, regarding Northwest Atlantic regional stock assessments; Steven Swartz, 305-361-4487, e-mail Steven.Swartz@noaa.gov, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Tim Price, 562-980-4020, e-mail

Tim.Price@noaa.gov, regarding Pacific regional stock assessments.

**SUPPLEMENTARY INFORMATION:** Section 117 of the MMPA (16 U.S.C. 1386) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. The SARs contain information about the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

The MMPA also requires NMFS and FWS to review the SARs annually for strategic stocks of marine mammals and at least every three years for stocks determined to be non-strategic. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups, reviewed the status of marine mammal stocks as required and revised reports for which new information was available. Summary tables for all stocks of marine mammals in the three regions (Tables 1-3) indicate revisions to the SARs. NMFS solicits public comments on the draft Alaska, Atlantic and Gulf of Mexico, and Pacific reports.

**Alaska Stocks**

The Alaska SARs present revised stock assessments for 15 marine mammal stocks under NMFS' jurisdiction. New information for all strategic stocks, Pacific white-sided dolphins, harbor porpoise, Dall's porpoise, and gray whales were reviewed in late 2000, leading to the revision of the following SARs for 2001:

- Alaska stock of bearded seals;
- Cook Inlet stock of beluga whales;
- Western Arctic stock of bowhead whales;
- Northeast Pacific stock of fin whales;
- Central and Western North Pacific stocks of humpback whales;
- Eastern North Pacific and Northern Resident stocks of killer whales;
- Alaska stock of minke whales;
- North Pacific stock of Northern right whales;
- Eastern North Pacific stock of northern fur seals;
- Alaska stock of ribbon seals;
- Alaska stock of ringed seals;
- Alaska stock of spotted seals; and
- Eastern and Western U.S. stocks of Steller sea lions.

The new information on abundance and mortality did not change the status of any of the Alaska stocks from the 2000 SARs.

**Atlantic and Gulf of Mexico Stocks**

The Atlantic and Gulf of Mexico SARs present revised stock assessments for 17

marine mammal stocks under NMFS' jurisdiction. The 2001 draft SARs for the Atlantic and Gulf of Mexico contain updated assessments for Atlantic strategic stocks and for Atlantic and Gulf of Mexico stocks for which significant new information was available. This review led to the revision of the following stock assessments for 2001:

- Western North Atlantic (WNA) stock of harbor seals;
- WNA stock of gray seals;
- WNA stock of harp seals;
- Gulf of Maine/Bay of Fundy stock of harbor porpoise;
- WNA stock of Risso's dolphins;
- WNA stock of Atlantic white-sided dolphins;
- WNA stock of common dolphins;
- WNA stock of Cuvier's beaked whales;
- WNA stock of mesoplodon beaked whales;
- WNA stock of long-finned pilot whales;
- WNA stock of short-finned pilot whales;
- North Atlantic stock of sperm whales;
- WNA stock of North Atlantic right whales;
- Gulf of Maine stock of humpback whales;
- WNA stock of fin whales;
- Canadian east-coast stock of minke whales; and
- WNA stock of blue whales.

Most of the proposed changes incorporate new information into sections on population size and mortality estimates. Information on human interactions (fishery and ship strikes) between the right whale, humpback whale, fin whale, and minke whale stocks were reviewed and updated. The new information on abundance and mortality did not change the status of any of the Atlantic or Gulf of Mexico stocks from the 2000 SARs.

The draft 2001 SAR for the Gulf of Maine/Bay of Fundy population of harbor porpoise presents a revised abundance estimate of 89,700 animals, with a corresponding potential biological removal (PBR) level of 747 animals. The revised estimate is based on a 1999 survey that covered a larger area than covered by earlier surveys. Additionally, NMFS reported the estimated mortality and serious injury for harbor porpoise for 1999, the year the Harbor Porpoise Take Reduction Plan (HPTRP) was implemented. The estimated mean annual mortality in 1999 was 323 animals in U.S. fisheries, which is a significant reduction in mortality relative to levels before the HPTRP was implemented. Based on a comparison of the PBR resulting from

the 1999 abundance data and the 1999 mortality and serious injury data, this stock no longer qualifies as a strategic stock. However, because the reported estimated mortality and serious injury reflects only one year of data, NMFS proposes to maintain this stock as strategic until additional data corroborate that serious injury and mortality continue to be below the PBR level.

#### **Pacific Stocks**

The Pacific SARs present revised stock assessments for 10 Pacific marine mammal stocks under NMFS' jurisdiction. New estimates of abundance are available for 9 stocks, which are revised in the 2001 stock assessment reports:

California stock of harbor seals (Channel Islands only);  
Hawaii stock of Hawaiian monk seals;  
Northern and Central California stocks of harbor porpoise;  
California coastal stock of bottlenose dolphins;  
Eastern North Pacific southern resident stock of killer whales;  
Eastern North Pacific stock of humpback whales;  
California/Oregon/Washington (CA/OR/WA) stock of sperm whales; and,  
CA/OR/WA stock of fin whales. The new information on abundance and mortality did not change the status of any of the Pacific stocks from the 2000 SARs.

New information on changes in the Hawaiian longline fishery is presented in the Hawaii false killer whale report. The stock of humpback whale

previously referred to as the "CA/OR/WA - Mexico" stock has been renamed the "Eastern North Pacific" stock, reflecting increased knowledge of the whale's range and movements. In the past, the PBR level for Hawaiian monk seals was listed as zero, assuming that the Endangered Species Act took precedence in the management of this stock. However, this statement was incorrect, and NMFS proposes to change the PBR level to 5 animals.

#### **Electronic Access**

Electronic copies of the SARs are accessible via the Internet at [http://www.nmfs.noaa.gov/prot\\_res/PR2/Stock\\_Assessment\\_Program/sars.html](http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html).

**BILLING CODE 3510-22-S**

Table 1--Summary table of Alaska marine mammal stocks. Changes to the estimates of abundance, human-caused mortality, and other items are indicated

Species	Stock Area	N(min)	0.5 R(max)	F(r)	PBR	Annual Fishing Mortality	Annual Subsistence Mortality	Strategic Status
Baird's beaked whale	Alaska	n/a	0.02	0.50	n/a	0	see SAR	N
Bearded seal	Alaska	n/a	0.06	0.50	n/a	<del>2</del> 1	n/a	N
Beluga whale	Beaufort Sea	32,453	0.02	1.00	649	0	184	N
Beluga whale	E. Chukchi Sea	3,710	0.02	1.00	74	0	68	N
Beluga whale	E. Bering Sea	6,439	0.02	1.00	129	1*	121	N
Beluga whale	Bristol Bay	1,316	0.02	1.00	26	1*	19	N
Beluga whale	Cook Inlet	<del>303</del> 360	0.02	0.30	<del>1.8</del> 2.2	0*	<del>65</del> 0	Y
Bowhead whale	W. Arctic	7,738	0.02	0.50	77	0	<del>49</del> 54	Y
Cuvier's beaked whale	Alaska	n/a	0.02	0.50	n/a	0	0	N
Dall's porpoise	Alaska	76,874	0.02	1.00	1,537	42	0	N
Fin whale	NE Pacific	n/a	0.02	0.10	n/a	0	0	Y
Gray whale	E. N. Pacific	24,477	0.0235	1.00	575	64	76	N
Harbor porpoise	SE Alaska	8,376	0.02	0.50	83	3*	0	N
Harbor porpoise	Gulf of Alaska	16,630	0.02	0.50	166	25	0	N
Harbor porpoise	Bering Sea	8,549	0.02	0.50	86	2	0	N
Harbor seal	Gulf of Alaska	28,917	0.06	0.50	868	36	791	N
Harbor seal	Gulf of Alaska	28,917	0.06	0.50	868	36	791	N
Harbor seal	Bering Sea	12,648	0.06	0.50	379	31	161	N
Humpback whale	W. N. Pacific	367	0.02	0.10	0.7	<del>0.4</del> 0.6	0	Y
Humpback whale	Cent. N. Pacific	3,698	0.02	0.10	7.4	<del>2.8</del> 3.5	0	Y

Species	Stock Area	N(min)	0.5 R(max)	F(r)	PBR	Annual Fishing Mortality	Annual Subsistence Mortality	Strategic Status
Killer whale	E. N. Pacific N. resident	<del>717</del> 723	0.02	0.50	7.2	<del>0.8</del> 1.4	0	N
Minke whale	Alaska	n/a	0.02	0.50	n/a	0	0	N
Northern right whale	N. Pacific	n/a	0.02	0.10	n/a	0	0	Y
Northern fur seal	E. North Pacific	<del>848,539</del> 832,798	0.043	0.50	<del>18,244</del> 17,905	<del>16</del> 15	<del>1,708</del> 1,495	Y
Pacific white- sided dolphin	Cent. N. Pacific	26,880	0.02	0.50	269	4	0	N
Ribbon seal	Alaska	n/a	0.06	0.50	n/a	1	n/a	N
Ringed seal	Alaska	n/a	0.06	0.50	n/a	<del>1</del> 0	n/a	N
Sperm whale	N. Pacific	n/a	0.02	0.10	n/a	0	0	Y
Spotted seal	Alaska	n/a	0.06	0.50	n/a	<del>2*</del> 3	see SAR	N
Stejneger's beaked whale	Alaska	n/a	0.02	0.50	n/a	0	0	N
Steller sea lion	E. U. S.	<del>30,403</del> 31,005	0.06	0.75	<del>1,368</del> 1,395	<del>16</del> 2.7**	0	Y
Steller sea lion	W. U. S.	<del>39,031</del> 34,600	0.06	0.10	<del>234</del> 208	<del>30</del> 28.3	<del>412</del> 353	Y

C.F. = correction factor; CV C.F. = CV of correction factor; Comb. CV = combined CV; Status: S=Strategic, NS=Not Strategic, n/a = not available.

\* = No reported take by fishery observers; however, observer coverage was minimal or nonexistent.

\*\* = This does not include intentional take in British Columbia

Table 2--Summary table of Atlantic and Gulf of Mexico marine mammal stocks. Changes to the estimates of abundance, human-caused mortality, and other items are indicated

Species	Stock Area	N(min)	R(max)	F(r)	PBR	Total Annual Mortality	Annual Fishing Mortality	Strategic Status
Harbor seal	Western North Atlantic (WNA)	30,990	0.12	1.0	1,859	<del>873</del> 895	<del>873</del> 895	N
Gray seal	WNA	NA	NA	NA	NA	<del>75</del> 103	<del>75</del> 103	N
Harp seal	WNA	N/A	N/A	N/A	N/A	<del>402</del> 245	<del>402</del> 245	N
Hooded seal	WNA	N/A	N/A	N/A	N/A	5.6	5.6	N

Table 2 - cont.

Species	Stock Area	N(min)	R(max)	F(r)	PBR	Total Annual Mortality	Annual Fishing Mortality	Strategic Status
Harbor porpoise	Gulf of Maine/Bay of Fundy	<del>48,289</del> 74,695	0.04	0.5	<del>483</del> 747	<del>1,578</del> 382 <sup>1</sup>	<del>1,521</del> 381 <sup>1</sup>	Y
Risso's dolphin	WNA	22,916	0.04	0.48	220	<del>52</del> 56	<del>52</del> 56	N
Atlantic white-sided dolphin	WNA	<del>19,196</del> 37,904	0.04	0.48	<del>184</del> 364	<del>223</del> 136	<del>223</del> 136	Y
White-beaked dolphin	WNA	N/A	0.04	N/A	N/A	0.00	0.00	N
Common dolphin	WNA	23,655	0.04	0.48	227	<del>612</del> 406	<del>612</del> 406	Y
Atlantic spotted dolphin	WNA	27,785 <sup>3</sup>	0.04	0.5	278	7.8 <sup>2</sup>	7.8 <sup>2</sup>	N
Pantropical spotted dolphin	WNA	8,450	0.04	0.5	84	7.8 <sup>2</sup>	7.8 <sup>2</sup>	N
Striped dolphin	WNA	44,500	0.04	0.5	445	7.3	7.3	N
Spinner dolphin	WNA	N/A	N/A	N/A	N/A	0.31	0.31	N
Bottlenose dolphin	WNA, offshore	24,897 <sup>3</sup>	0.04	0.5	249	5.3	5.3	N
Bottlenose dolphin	WNA, coastal	2,482	0.04	0.5	25	46	46	Y
Dwarf sperm whale	WNA	373 <sup>4</sup>	0.04	0.5	3.7	0.25	0.25	N
Pygmy sperm whale	WNA	373 <sup>4</sup>	0.04	0.5	3.7	0.25	0.25	N
Killer whale	WNA	N/A	0.04	N/A	N/A	0.00	0.00	N
Pygmy killer whale	WNA	6	0.04	0.5	0.1	0.00	0.00	N
Northern bottlenose whale	WNA	N/A	0.04	N/A	N/A	0.00	0.00	N
Cuvier's beaked whale	WNA	2,419 <sup>5</sup>	0.04	0.5	24	<del>9.5</del> 0	<del>9.5</del> <sup>6</sup> 0	Y
Mesoplodon beaked whale	WNA	2,419 <sup>5</sup>	0.04	0.5	24	<del>9.5</del> 0	<del>9.5</del> <sup>6</sup> 0	Y
Pilot whale, long-finned	WNA	11,343 <sup>7</sup>	0.04	<del>0.5</del> 0.48	<del>113</del> 108	<del>146</del> <sup>8</sup> 245	<del>137</del> 245 <sup>8</sup>	Y
Pilot whale, short-finned	WNA	11,343 <sup>7</sup>	0.04	<del>0.5</del> 0.48	<del>113</del> 108	<del>146</del> <sup>8</sup> 245	<del>137</del> 245 <sup>8</sup>	Y
Sperm whale	North Atlantic	3,505	0.04	0.1	7.0	0.00	0.00	Y

Table 2 - cont.

Species	Stock Area	N(min)	R(max)	F(r)	PBR	Total Annual Mortality	Annual Fishing Mortality	Strategic Status
North Atlantic right whale	WNA	291	0	0.1	0.0	<del>1.4</del> 2.2 <sup>9</sup>	<del>0.6</del> 1.0 <sup>9</sup>	Y
Humpback whale	WNA Gulf of Maine	<del>40,019</del> 568	0.065	0.1	<del>33</del> 1.8	<del>3.7</del> 4.2 <sup>10</sup>	<del>2.7</del> 3.2 <sup>10</sup>	Y
Fin whale	WNA	<del>1,803</del> 2,362	0.04	0.1	<del>3.6</del> 4.7	<del>0.8</del> 1.8 <sup>11</sup>	<del>0.2</del> 0.6 <sup>11</sup>	Y
Sei whale	Nova Scotia	N/A	0.04	0.1	N/A	0.00	0.00	Y
Minke whale	Canadian east coast	<del>3,097</del> 3,515	0.04	0.5	<del>31</del> 35	<del>3.0</del> 2.4 <sup>12</sup>	<del>3.0</del> 2.2 <sup>12</sup>	N
Blue whale	WNA	308	0.04	0.1	0.6	0.00	0.00	Y
Bottlenose dolphin	Gulf of Mexico bay, sound, and estuarine	3,933	0.04	0.5	39	N/A	N/A	Y
Dwarf sperm whale	Northern Gulf of Mexico	N/A	0.04	N/A	N/A	0.00	0.00	N
Pygmy sperm whale	Northern Gulf of Mexico	N/A	0.04	N/A	N/A	0.00	0.00	N

WNA = Western North Atlantic.

- ~~Total mortality includes 57 harbor porpoises from the Canadian sink gillnet and herring weir fisheries.~~ The total annual estimated average human-caused mortality is 382 harbor porpoises per year. This is derived from four components: 323 harbor porpoise per year (CV=0.25) from USA fisheries using observer data, 39 per year (unknown CV) from Canadian fisheries using observer data, 19 per year from USA unknown fisheries using strandings data, and 1 per year from unknown human-caused mortality (a mutilated stranded harbor porpoise)
- Mortality data are not separated by species; therefore, species-specific estimates are not available. The mortality estimate represents both Atlantic and Pantropical spotted dolphins.
- Estimates may include sightings of the coastal form.
- This estimate may include both the dwarf and pygmy sperm whales.
- This estimate includes Cuvier's beaked whales and undifferentiated *Mesoplodon* spp. beaked whales.
- This is the average mortality of undifferentiated beaked whales (*Mesoplodon* spp.) ~~based on 5 years of observer data. This annual mortality rate includes an unknown number of Cuvier's beaked whales.~~
- This estimate may include both long-finned and short-finned pilot whales.
- Mortality data are not separated by species; therefore, species-specific estimates are not available. This mortality estimate represents both long-finned and short-finned pilot whales. Total annual mortality includes Nova Scotia 9594-96 average of 98 long-finned pilot whales.
- ~~This is the average mortality of right whales based on 5 years of observer data (0.0) and additional fishery impact records (0.6).~~ The total estimated human-caused mortality and serious injury to right whales is estimated at 2.2 per year (USA waters, 1.4; Canadian waters, 0.8). This is derived from two components: 1) non-observed fishery entanglement records at 1.0 per year (USA waters, 0.6; Canadian waters, 0.4), and 2) ship strike records at 1.2 per year (USA waters, 0.8; Canadian waters, 0.4).
- ~~This is the average mortality of humpback whales based on 5 years of observer data (0.25) and additional fishery impact records (2.4).~~ The total estimated human-caused mortality and serious injury to the Gulf of Maine humpback whale stock is estimated as 4.2 per year (USA waters, 3.8; Canadian waters, 0.4). This average is derived from two components: 1) incidental fishery interaction records 3.2 (USA waters, 2.8; Canadian waters, 0.4); and 2) records of vessel collisions, 1.0 (USA waters, 1.0; Canadian waters, 0).
- This is based on a review of NMFS anecdotal records from 19945-19989, that yielded an average of ~~0.81~~ 1.8 human caused mortality ~~-0.61~~ 1.2 ship strikes (all US waters), ~~0.20~~ 0.6 fishery interactions (0.4 US waters, 0.2 Canadian waters).
- During 1995 to 1998, the USA total annual estimated average human-caused mortality is ~~2.43~~ 0 minke whales per year. This is derived from three components: ~~0.1~~ 1 minke whales per year (CV=0.0) from USA ~~observed~~ fisheries using observer data, ~~2.21~~ 1.6 minke whales per year from USA fisheries using strandings and entanglement data, and ~~0.23~~ 0 minke whales per year from ship strikes.

Table 3--Summary table of Pacific marine mammal stocks. Changes to the estimates of abundance, human-caused mortality, and other items are indicated

Species	Stock Area	N(min)	R(max)	F(r)	PBR	Total Annual Mortality + Serious Injury	Annual Fish. Mortality + Serious Injury	Strategic Status
California sea lion	U.S.	109,854	0.12	1.0	6,591	1,352	1,208	N
Harbor Seal	CA	27,962	0.12	1.0	1,678	<del>39</del> ≥714	<del>n/a</del> 666	N
Harbor Seal	OR/ WA Coast	24,705	0.12	1.0	1,482	≥18	≥16	N
Harbor Seal	WA Inland Waters	15,174	0.12	1.0	910	>43	>38	N
Northern Elephant Seal	CA breeding	51,625	0.083	1.0	2,142	>33	>33	N
Guadalupe Fur Seal	Mexico to CA	3,028	0.137	0.5	104	0.0	0.0	Y
Northern Fur Seal	San Miguel Island	2,336	0.086	1.0	100	0.0	0.0	N
Monk seal	Hawaii	1,436	0.07	0.1	5.0	n/a	n/a	Y
Harbor porpoise	Central CA	<del>4,172</del> 5,563	0.04	0.50	<del>42</del> 56	<del>63</del> 80	<del>63</del> 80	Y
Harbor porpoise	Northern CA	<del>8,061</del> 11,054	0.04	1.0	<del>81</del> 221	≥0.2	>0.2	N
Harbor porpoise	OR/WA Coast	32,769	0.04	0.5	328	12	12	N
Harbor porpoise	WA Inland Waters	2,545	0.04	0.4	20	15	15	N
Dall's Porpoise	CA/OR/WA	81,866	0.04	0.45	737	12	12	N
Pacific White-sided Dolphin	CA/OR/WA	17,475	0.04	0.45	157	≥6.8	>6.8	N
Risso's Dolphin	CA/OR/WA	13,079	0.04	0.4	105	5.5	5.5	N
Bottlenose Dolphin	CA coastal	<del>154</del> 186	0.04	0.5	<del>1.5</del> 1.9	0	0	N
Bottlenose Dolphin	CA/OR/WA Offshore	850	0.04	0.5	8.5	0	0	N
Striped Dolphin	CA/OR/WA	17,995	0.04	0.5	180	0	0	N
Common dolphin, short-beaked	CA/OR/WA	318,795	0.04	0.5	3,188	79	79	N
Common dolphin, long-beaked	CA	27,739	0.04	0.45	250	14	14	N

Table 3 - cont.

Species	Stock Area	N(min)	R(max)	F(r)	PBR	Total Annual Mortality + Serious Injury	Annual Fish. Mortality + Serious Injury	Strategic Status
Northern right-whale dolphin	CA/OR/WA	10,060	0.04	0.48	97	15	15	N
Killer whale	Eastern North Pacific Transient	376	0.04	0.45	3.4	2.6	2.4	N
Killer whale	Eastern North Pacific Offshore	209	0.04	0.5	2.1	0	0	N
Killer whale	Eastern North Pacific Southern Resident	<del>84</del> 82	0.04	0.5	0.8	0	0	N
Short-finned pilot whale	CA/OR/WA	717	0.04	0.4	5.7	3.0	3.0	N
Baird's Beaked Whale	CA/OR/WA	313	0.04	0.5	2.0	0	0	N
Mesoplodont Beaked Whales	CA/OR/WA	2,734	0.04	0.5	27	0	0	N
Cuvier's Beaked Whale	CA/OR/WA	4,309	0.04	0.5	43	0	0	N
Pygmy Sperm Whale	CA/OR/WA	2,837	0.04	0.5	28	0	0	N
Sperm whale	CA/OR/WA	<del>995</del> 1,026	0.04	0.1	<del>2.0</del> 2.1	2.5	2.5	Y
Humpback whale	Eastern North Pacific	<del>861</del> 944	0.04	0.1	<del>1.7</del> 1.9	1.4	1.2	Y
Blue whale	Eastern North Pacific	1,716	0.04	0.1	1.7	0.0	0	Y
Fin whale	CA/OR/WA	<del>1,044</del> 1,581	0.04	0.1	<del>2.1</del> 3.2	0.4	0	Y
Bryde's whale	CA/OR/WA	11,163	0.04	0.5	n/a	0	0	N
Sei whale	CA/OR/WA	n/a	0.04	0.1	n/a	0	0	Y
Minke whale	CA/OR/WA	440	0.04	0.45	4.0	0	0	N
Rough-Toothed Dolphin	Hawaii	76	0.04	0.5	0.8	n/a	n/a	N
Risso's Dolphin	Hawaii	n/a	0.04	0.5	n/a	n/a	n/a	N
Bottlenose Dolphin	Hawaii	479	0.04	0.5	4.8	n/a	n/a	N

Table 3 - cont.

Species	Stock Area	N(min)	R(max)	F(r)	PBR	Total Annual Mortality + Serious Injury	Annual Fish. Mortality + Serious Injury	Strategic Status
Pantropical spotted dolphin	Hawaii	2,040	0.04	0.5	20	n/a	n/a	N
Spinner dolphin	Hawaii	2,355	0.04	0.5	24	n/a	n/a	N
Striped dolphin	Hawaii	52	0.04	0.5	0.5	n/a	n/a	N
Melon-headed whale	Hawaii	81	0.04	0.5	0.8	n/a	n/a	N
Pygmy killer whale	Hawaii	n/a	0.04	0.5	n/a	n/a	n/a	N
False killer whale	Hawaii	83	0.04	0.5	0.8	9.0	9.0	Y
Killer whale	Hawaii	n/a	0.04	0.5	n/a	n/a	n/a	N
Pilot whale, short-finned	Hawaii	1,313	0.04	0.5	13	n/a	n/a	N
Blainville's beaked whale	Hawaii	43	0.04	0.5	0.4	n/a	n/a	N
Cuvier's beaked whale	Hawaii	29	0.04	0.5	0.3	n/a	n/a	N
Pygmy sperm whale	Hawaii	n/a	0.04	0.5	n/a	n/a	n/a	N
Dwarf sperm whale	Hawaii	n/a	0.04	0.5	n/a	n/a	n/a	N
Sperm whale	Hawaii	43	0.04	0.1	0.4	n/a	n/a	Y
Blue whale	Hawaii	n/a	0.04	0.1	n/a	n/a	n/a	Y
Fin whale	Hawaii	n/a	0.04	0.1	n/a	n/a	n/a	Y
Bryde's whale	Hawaii	n/a	0.04	0.5	n/a	n/a	n/a	N

N/A = not available; CA = California; OR = Oregon; WA = Washington.

Dated: May 31, 2001.

**Wanda L. Cain,**

*Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 01-14406 Filed 6-6-01; 8:45 am]

BILLING CODE 3510-22-C

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden; it includes the actual data collection instruments [if any].

**DATES:** Comments must be submitted on or before July 9, 2001.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Linda J. Mauldin at (202) 418-5120; FAX: (202) 418-5524; email: <mailto:lmauldin@cftc.gov> [lmauldin@cftc.gov](mailto:lmauldin@cftc.gov) and refer to OMB Control No. 3038-0025.

#### SUPPLEMENTARY INFORMATION:

*Title:* Practice by Former Members and Employees of the Commission (OMB Control No. 3038-0025). This is a request for extension of a currently approved information collection.

*Abstract:* Commission Rule 140.735-6 governs the practice before the Commission of former members and employees of the Commission and is intended to ensure that the Commission is aware of any existing conflict of interest. The rule generally requires former members and employees who are employed or retained to represent any person before the Commission within two years of the termination of their CFTC employment to file a brief written statement with the Commission's Office of General Counsel. The proposed rule was promulgated pursuant to the Commission's rulemaking authority contained in section 8a(5) of the Commodity Exchange Act, 7 U.S.C. 12a(5) (1994), as amended.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 16, 2001 (66 FR 27079).

*Burden statement:* The respondent burden for this collection is estimated to

average .10 hours per response to file the brief written statement. This estimate 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; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* 3.

*Estimated number of responses:* 1.

*Estimated total annual burden on respondents:* 4.5 hours.

*Frequency of collection:* On occasion.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038-0025 in any correspondence.

Linda J. Mauldin, Office of General Counsel, U.S. Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.

Dated: June 4, 2001.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 01-14389 Filed 6-6-01; 8:45 am]

**BILLING CODE 6351-01-M**

## CONSUMER PRODUCT SAFETY COMMISSION

### Issuance of Policy Statement

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final policy statement.

**SUMMARY:** Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b), requires manufacturers, distributors, and retailers of consumer products to report potential product hazards to the Commission. After receiving public comments, the Commission issues a final policy statement that information concerning products manufactured or sold outside of the United States that may be relevant to evaluating defects and hazards associated with products distributed within the United States should be evaluated and may be reportable under section 15(b).

**DATES:** This policy becomes effective June 7, 2001.

### FOR FURTHER INFORMATION CONTACT:

Marc Schoem, Director, Division of Recalls and Compliance, Consumer Product Safety Commission, Washington, DC 20207, telephone—(301) 504-0608, ext. 1365, fax—(301) 504-0359, E-mail address—[mschoem@cpsc.gov](mailto:mschoem@cpsc.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b) requires manufacturers, distributors, and retailers of consumer products to report potential product hazards to the Commission. In 1978, the Commission published an interpretative rule, 16 CFR 1115, that clarified the Commission's understanding of this requirement and that established policies and procedures for filing such reports and proffering remedial actions to the Commission. That rule talks generally about the types of information a firm should evaluate in considering whether to report, but does not specifically address information about experience with products manufactured or sold outside of the United States. Neither the statute, nor the rule itself, excludes such information from being evaluated or reported under section 15(b).

Over the past several years, the Commission has received section 15(b) reports that have included information on experience with products abroad. When appropriate, the agency has initiated recalls based in whole or in part on that experience. In addition, the Bridgestone/Firestone tire recall of 2000 focused public attention on the possible relevance of information generated abroad to safety issues in the United States. Accordingly, to assure that firms who obtain information generated abroad are aware that they should consider such information in deciding whether there is a need to report under section 15(b), the staff recommended that the Commission issue a policy statement. On January 3, 2001 (66 FR 351), the Commission solicited comments on a proposed policy statement stating the Commission's position that information concerning products sold outside of the United States that may be relevant to defects and hazards associated with products distributed within the United States should be evaluated and may be reportable under section 15(b).

#### Discussion

The Commission received seven comments in response to the proposed statement. Two supported the policy

statement. One of these commentors recommended that the Commission codify the policy as a substantive rule with specific provisions to prevent firms from circumventing the reporting obligation. A total of five commentors opposed issuing the statement as drafted. Two of these joined with the CPSC Coalition of the National Association of Manufacturers ("NAM") in requesting that the Commission withdraw the policy statement. They also requested that, concurrent with the withdrawal, the Commission issue a clarification that no new obligations or modifications to existing rules are established, or, in the alternative, that the Commission engage in a public dialogue to review the issues and objectives raised by the policy statement. One commentor supported withdrawing the statement because it contended that the Commission had not demonstrated the need for it. The last supported the underlying rationale for the policy, but proposed limiting the policy to requiring the reporting of foreign product safety issues only when reporting would be required under the Consumer Product Safety Act. A summary of the comments and our responses appear below.

#### *a. Interpretative Rule*

In its 1978 **Federal Register** notice, the Commission specifically addressed whether the reporting regulations should be substantive or interpretative. The significance of this distinction is that, once a substantive rule goes into effect, it has the force and effect of law, and its provisions cannot be challenged in a subsequent proceeding, for example, an action to assess civil penalties. An interpretative rule, on the other hand, simply offers guidance as to what the Commission believes the law means or requires. A firm that disagrees with one or more of the provisions of an interpretative rule can, in an enforcement proceeding, challenge the reasonableness of the Commission's interpretation(s), and can prevail in the proceeding if its contention is upheld. In 1978, after seeking public comment, the Commission elected to publish the reporting rule as an interpretative rule.

NAM contends that, in issuing the proposed policy statement, the Commission is, in effect, promulgating a substantive rule, and has failed to comply with the formal rulemaking procedures of the Administrative Procedure Act, 5 U.S.C. 553. Thus, NAM claims that the policy would be invalid, if issued.

The Commission issued the policy statement because it considered it only fair that firms who might be unfamiliar

with the reporting requirements be put on notice of the agency's view that information concerning foreign experience relevant to a product in the U.S. should be evaluated and *may* be reportable if it otherwise meets the criteria of section 15(b) and 16 CFR 1115. As the policy statement expressly acknowledges, this is a straight-forward interpretation of the requirements of section 15(b), and is consistent with the interpretative reporting regulation which, on its face, does not limit reporting to information derived solely from experience with products sold in the United States. Given the history of the interpretative regulation and the express acknowledgment in the policy statement that it too is interpretative, the NAM's attempt to characterize the statement as a substantive rule is misplaced.

#### *b. Specificity of the Policy Statement*

NAM posed a number of hypothetical questions that it claims the policy statement should, but does not address. In doing so, it treats the reporting rule as a substantive rule that firms must follow, even though it acknowledges in a footnote that the rule is interpretative. The short response to the NAM queries is, of course, that, as an interpretative rule, the reporting rule imposes no binding obligation on any firm. Moreover, the concerns that NAM raises—for example, whether a firm is responsible for reporting if an employee has knowledge of a reportable problem, and the extent to which a firm must investigate incidents—are not unique to multi-national business operations. They have equal applicability to domestic operations. In fact, many of those concerns are substantially the same as those that commentors on the proposed interpretative rule on reporting raised in 1977, and that the Commission addressed in the preamble to and text of the final rule in 1978. 43 FR 34988. Thus, for example, section J of the preamble discusses imputing knowledge of safety-related information to a firm only when an employee capable of appreciating the significance of the information receives it. Section L points out the Commission's views on the need for firms to exercise reasonable diligence in investigating possible product defects. It further notes that the Commission will take into account the reasonableness of a firm's behavior in the circumstances when it considers the firm's compliance with the reporting regulations. Section 1115.14 of the rule and section J of the preamble acknowledge that the time frames recommended for investigation of possible defects and the imputation of

knowledge have flexibility, depending on the circumstances of a particular case.

While there may be a difference in degree in what it is reasonable to expect from reporting firms with respect to the content of and time for collecting foreign, as opposed to domestic, information, the Commission believes that the basic principles and procedures embodied in the 1978 rule and discussed in the preamble have always been and continue to be applicable to both domestic and multi-national business operations. Those principles and procedures have withstood almost a quarter of a century of experience—experience that has often involved firms obtaining and analyzing information from foreign sources, especially in cases involving products imported into the U.S. Moreover, over that period, the Commission has consistently recognized that what information it is reasonable to expect a firm to provide in a specific case depends on a number of factors. These include the size of the firm, the nature of its business, the method in which it conducts its operations, the age of the product involved, and the availability of relevant information. The location from which such information may be obtained and the difficulty in obtaining that information are simply additional factors to take into account.

The Commission notes that the process of business globalization and improvements in communication have substantially reduced the impediments to obtaining information from abroad that might have existed twenty years ago. Firms frequently communicate in seconds via the computer, telephone, and fax machine with their overseas customers, suppliers, and corporate relatives. Thus, the Commission sees no sound justification for accepting NAM's implicit premise that obtaining foreign information is so much more difficult than obtaining the same types of information generated domestically that different policies and procedures should apply. In fact, the Commission's experience demonstrates otherwise in that firms that have reported foreign information to the Commission, either on their own initiative or upon request of the staff, have been able to obtain the necessary information in a timely manner. Accordingly, for the reasons discussed above, the Commission does not believe that the concerns NAM has expressed warrant withdrawing or revising the policy statement.

#### *c. Need for the Policy Statement*

The Consumer Specialty Products Association (CSPA) suggested that the policy places an undue burden on

companies to implement monitoring programs abroad, comparable to those in the United States. The Association therefore took the position that the Commission must demonstrate the need for such a policy before establishing it.

Section 15(b) contemplates that manufacturers, distributors and retailers must consider all information relevant to the determination of whether a specific product contains a defect which could create a substantial product hazard or an unreasonable risk of serious injury or death. As the policy statement points out, neither the law nor the interpretative regulation excludes information from evaluation because of its geographic source. Accordingly, to the extent that CSPA implies that the statement imposes a burden on firms that did not previously exist, it is mistaken.

As an example of the need for the policy, the Commission recently accepted a substantial penalty to settle allegations that a company failed to report information relating to a defective water distiller in a timely manner. That information included analyses of incidents of product failure in Asia which the firm had learned about substantially before it finally reported to the Commission. Had the firm reported that information to the Commission in a timely manner, it could have expedited the subsequent recall, thus protecting consumers from the risk of fire at a much earlier date. Fires that later occurred in the U.S. could have been prevented. Examples of other cases in which information generated abroad has been relevant include corrective actions involving oil-filled radiators, stacking toys, strollers, and swimming vests, and civil penalty cases involving children's products, burners for boilers, and pacifiers. Moreover, in terms of need for the policy statement, with the volume of imported products entering the United States, information which is only available abroad, such as that related to product design, manufacturing changes, and quality assurance is essential to the evaluation of potential defects. The statement helps firms that may be unfamiliar with or unaware of this aspect of reporting to comply with their obligations under the law.

#### d. Additional Comments

One commenter feared that the policy statement would require firms to report products that violate safety standards issued by other countries, even if those products were in full compliance with U.S. requirements. The commenter requested that the Commission adopt a policy that would require the reporting

of foreign product safety issues only when reporting would otherwise be required under section 15(b). The Commission believes that the commenter may have misconstrued the scope of the policy statement, since the commenter's suggested alternative is in effect what the policy statement contemplates.

#### Conclusion

The Commission does not believe that any of the comments submitted warrant withdrawing or revising the statement. Accordingly, the Commission is issuing the policy statement. The Commission has, on its own initiative, made one revision to the statement to make it clear that the policy applies to information concerning products manufactured outside of the United States, as well as to information about products distributed abroad. The text of the policy statement is as follows:

#### **Guidance Document on Reporting Information Under 15 U.S.C. 2064(b) about Potentially Hazardous Products Manufactured or Distributed Outside the United States**

Section 15(b) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2064(b), imposes specific reporting obligations on manufacturers, importers, distributors and retailers of consumer products distributed in commerce. A firm that obtains information that reasonably supports the conclusion that such a product:

- Fails to comply with an applicable consumer product safety rule or with a voluntary consumer product safety standard upon which the Commission has relied under section 9 of the CPSA,
  - Contains a defect that could create a substantial product hazard as defined in section 15(a)(2) of the CPSA, 15 U.S.C. § 2064(a)(2), or
  - Creates an unreasonable risk of serious injury or death
- must immediately inform the Commission unless the firm has actual knowledge that the Commission has been adequately informed of the failure to comply, defect, or risk.

The purpose of reporting is to provide the Commission with the information it needs to determine whether remedial action is necessary to protect the public. To accomplish this purpose, section 15(b) contemplates that the Commission receive, at the earliest time possible, all available information that can assist it in evaluating potential product hazards. For example, in deciding whether to report a potential product defect, the law does not limit the obligation to report to those cases in which a firm has

finally determined that a product in fact contains a defect that creates a substantial product hazard or has pinpointed the exact cause of such a defect. Rather, a firm must report if it obtains information which *reasonably supports* the conclusion that a product it manufactures and/or distributes contains a defect which *could* create such a hazard *or* that the product creates an unreasonable risk of serious injury or death. 15 U.S.C. 2064(b)(2) and (3); 16 CFR 1115.4 and 6. Nothing in the reporting requirements of the CPSA or the Commission's interpretive regulation at 16 CFR Part 1115 limits reporting to information derived solely from experience with products sold in the United States. The Commission's interpretative rule enumerates, at 16 CFR 1115.12(f), examples of the different types of information that a firm should consider in determining whether to report. The regulation does not exclude information from evaluation because of its geographic source. The Commission interprets the statutory reporting requirements to mean that, if a firm obtains information that meets the criteria for reporting listed above and that is relevant to a product it sells or distributes in the U.S., it must report that information to the CPSC, no matter where the information came from. Such information could include incidents or experience with the same or a substantially similar product, or a component thereof, sold in a foreign country.

Over the past several years, the Commission has received reports under section 15(b) that have included information on experience with products abroad, and, when appropriate, has initiated recalls based in whole or in part on that experience. Thus, a number of companies already view the statutory language as the Commission does. However, with the expanding global market, more firms are obtaining this type of information, but many may be unfamiliar with this aspect of reporting. Therefore, the Commission issues this policy statement to assist those firms in complying with the requirements of section 15(b) of the Consumer Product Safety Act.

Dated: June 1, 2001.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 01-14299 Filed 6-6-01; 8:45 am]

**BILLING CODE 6355-01-P**

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

[OMB Control No. 9000-0037]

**Federal Acquisition Regulation;  
Proposed Collection; Presolicitation  
Notice and Response, Standard Form  
1417**

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for comments regarding an extension to an existing OMB clearance (9000-0037).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Presolicitation Notice and Response, Standard Form 1417. The clearance currently expires on September 30, 2001.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Submit comments on or before August 6, 2001.

**ADDRESSES:** Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Ralph DeStefano, Acquisition Policy Division, GSA (202) 501-1758.

**SUPPLEMENTARY INFORMATION:****A. Purpose**

Presolicitation notices are used by the Government for several reasons, one of which is to aid prospective contractors in submitting proposals without undue expenditure of effort, time, and money. The Government also uses the presolicitation notices to control printing and mailing costs. The presolicitation notice response is used to determine the number of solicitation documents needed and to assure that interested offerors receive the solicitation documents. The responses are placed in the contract file and referred to when solicitation documents are ready for mailing. After mailing, the responses remain in the contract file and become a matter of record.

**B. Annual Reporting Burden**

The annual reporting burden is estimated as follows:

*Respondents: 5,310.*

*Responses Per Respondent: 8.*

*Total Responses: 42,480.*

*Hours Per Response: 167.*

*Total Burden Hours: 7,094.*

**Obtaining Copies of Proposals**

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVP), Room 4035, Washington, DC 20405, telephone (202) 501-4755. Please cite OMB Control No. 9000-0037, Presolicitation Notice and Response, Standard Form 1417, in all correspondence.

Dated: June 1, 2001.

**Gloria Sochon,**

*Acting Director, Acquisition Policy Division.*

[FR Doc. 01-14325 Filed 6-6-01; 8:45 am]

**BILLING CODE 6820-34-P**

**DEPARTMENT OF DEFENSE****Department of the Navy****Notice of Availability of Invention for  
Licensing; Government-Owned  
Invention**

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 5,705,087 entitled "Fuel System Icing Inhibitor and Deicing Composition," Navy Case No. 76,993.

**ADDRESSES:** Requests for copies of the patent cited should be directed to the

Naval Research Laboratory, Code 1008.2, 4555 Overlook Avenue, SW., Washington, DC 20375-5320, and must include the Navy Case number.

**FOR FURTHER INFORMATION CONTACT:**

Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375-5320, telephone (202) 767-7230.

(Authority: 35 U.S.C. 207, 37 CFR Part 404).

Dated: May 29, 2001.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps., U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 01-14369 Filed 6-6-01; 8:45 am]

**BILLING CODE 3810-FF-U**

**DEPARTMENT OF EDUCATION****Notice of Proposed Information  
Collection Requests**

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before August 6, 2001.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites

public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 1, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

#### Office of Student Financial Assistance

*Type of Review:* Extension.

*Title:* Federal Register Notice Inviting Applications for the Participation in the Quality Assurance (QA) Program.

*Frequency:* One time.

*Affected Public:* Businesses or other for-profit; Not-for-profit institutions; Federal Government.

*Reporting and Recordkeeping Hour Burden:* Responses: 400. Burden Hours: 125.

*Abstract:* With this Notice, the Secretary invites institutions of higher education to send a letter of application to participate in the Department of Education's Quality Assurance Program. This Program is intended to allow and encourage participating institutions to develop and implement their own comprehensive programs to verify student financial aid application data. It also encourages alternative management approaches in areas of institutional processing and disbursement of Title IV funds, and entrance and exit counseling.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202-4651. Requests may also be electronically mailed to the internet address [OCIO\\_IMG\\_Issues@ed.gov](mailto:OCIO_IMG_Issues@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708-9266 or via his [Joe.Schubart@ed.gov](mailto:Joe.Schubart@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal

Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-14318 Filed 6-6-01; 8:45 am]

**BILLING CODE 4000-01-P**

#### DEPARTMENT OF EDUCATION

##### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 9, 2001.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address [Lauren\\_Wittenberg@omb.eop.gov](mailto:Lauren_Wittenberg@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: June 1, 2001.

**John Tressler,**

*Leader, Regulatory Information Management, Office of the Chief Information Officer.*

#### Office of the Undersecretary

*Type of Review:* New.

*Title:* Evaluation of Title I Accountability Systems and School Improvement Efforts (TASSIE).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:* Responses: 5,140. Burden Hours: 2,570.

*Abstract:* The purpose of the Evaluation of Title I Accountability Systems and School Improvement Efforts is to examine and evaluate Title I accountability systems and school improvement efforts in a nationally representative sample of districts and schools. This project addresses both the implementation and effectiveness of accountability practices in 2,200 districts and 740 schools. The TASSIE will provide data on the extent of alignment between Title I accountability systems and states' and districts' own accountability systems, the assistance and incentives provided to school identified as in need of improvement, and will assess the impact of these policies and practices on schools, teachers, and students.

Requests for copies of the proposed information collection request may be accessed from <http://edicsweb.ed.gov>, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, D.C. 20202-4651. Requests may also be electronically mailed to the internet address [OCIO\\_IMG\\_Issues@ed.gov](mailto:OCIO_IMG_Issues@ed.gov) or faxed to 202-708-9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacqueline Montague at (202) 708-5359 or via her internet address [Jackie.Montague@ed.gov](mailto:Jackie.Montague@ed.gov). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. 01-14317 Filed 6-6-01; 8:45 am]

**BILLING CODE 4000-01-P**

**DEPARTMENT OF EDUCATION****[CFDA No. 84.033]****Student Financial Assistance; Federal Work-Study Programs****AGENCY:** Department of Education.**ACTION:** Notice of the closing date for institutions to submit a request for a waiver of the seven percent community service expenditure requirements in the Federal Work-Study (FWS) Program.

**SUMMARY:** June 29, 2001 is the closing date for institutions to request a waiver of the community service expenditure requirements for the 2001–2002 award year (July 1, 2001 through June 30, 2002). An institution is required to expend at least seven percent of its total Federal allocation under the FWS program to compensate students in community service employment. Also, in meeting the seven percent community service expenditure requirement, one or more of the institution's FWS students must be employed as a reading tutor for children in a reading tutoring project or performing family literacy activities in a family literacy project. The FWS program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

**DATES:** *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* To request a waiver, an institution must mail its waiver request to the Department by June 29, 2001 or hand deliver its waiver request to the Department by 5:00 p.m. eastern time on June 29, 2001. If you choose you may fax or e-mail your waiver request and any supporting information or documents by 5:00 p.m. eastern time on June 29, 2001. You must fax the waiver request to Sandra Donelson at (202) 205–1919 or (202) 260–0522 or e-mail to the following address: [Sandra.Donelson@ed.gov](mailto:Sandra.Donelson@ed.gov).

**ADDRESSES:****Waiver Requests Delivered by Mail**

An institution must address a waiver request delivered by mail to Ms. Sandra Donelson, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 600D, Portals Building, Washington, DC 20202–5453. An institution must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either as proof of mailing: (1) A private metered postmark or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

The Secretary encourages an institution to use certified or at least first-class mail. Institutions that submit waiver requests after the closing date of June 29, 2001 will not be considered.

**Waiver Request Delivered by Hand**

If an institution delivers its waiver request by hand, it must deliver the waiver request to Ms. Sandra Donelson, Student Financial Assistance, U.S. Department of Education, Suite 600D, Portals Building, 1250 Maryland Avenue, SW., Washington, DC. The Secretary accepts hand-delivered waiver requests between 8:00 a.m. and 5:00 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. The Secretary will not accept waiver requests that are delivered by hand after 5:00 p.m. on June 29, 2001.

**SUPPLEMENTARY INFORMATION:** Under section 443(b)(2)(A) of the HEA, an institution must use at least seven percent of the total amount of its FWS Federal allocation granted for an award year to compensate students employed in community service. However, we may waive this requirement if it is determined that enforcing it would cause hardship for students at the institution.

An appropriate institutional official must sign the waiver request and include, above the signature, the following statement: "I certify that the information I provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by the Department of Education."

To receive a waiver, you must demonstrate that complying with the seven percent requirements would cause hardship for students at your institution. To allow flexibility to consider factors that may be valid reasons for a waiver, we do not specify the particular circumstances that would support granting a waiver. However, we do not foresee many instances in which a waiver will be granted. The fact that it may be difficult for you to comply with this provision of the HEA is not a basis for granting a waiver.

**Applicable Regulations**

The following regulations apply to the FWS program:

- (1) Student Assistance General Provisions, 34 CFR part 668.
- (2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.
- (3) Federal Work-Study Programs, 34 CFR part 675.
- (4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.
- (5) New Restrictions on Lobbying, 34 CFR part 82.
- (6) Government Debarment and Suspension (Nonprocurement) and Government Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.
- (7) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Donelson, Student Financial Assistance, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 600D, Portals Building, Washington, DC. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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**Program Authority:** 42 U.S.C. 2753.

Dated: May 31, 2001.

**Greg Woods,**

*Chief Operating Officer, Student Financial Assistance.*

[FR Doc. 01-14383 Filed 6-6-01; 8:45 am]

BILLING CODE 4000-01-U

## DEPARTMENT OF EDUCATION

[CFDA NO.: 84.033]

### Student Financial Assistance; Federal Work-Study Programs

**AGENCY:** Department of Education.

**ACTION:** Notice of the closing date for filing the "Institutional Application and Agreement for Participation in the Work-Colleges Program."

**SUMMARY:** The Secretary gives notice to institutions of higher education of the deadline for an eligible institution to apply for participation in the Work-Colleges Program and to apply for funding under that program for the 2001-2002 award year (July 1, 2001 through June 30, 2002) by submitting to the Secretary an "Institutional Application and Agreement for Participation in the Work-Colleges Program."

The Work-Colleges Program along with the Federal Work-Study Program and the Job Location and Development Program are known collectively as the Federal Work-Study programs. The Work-Colleges Program is authorized by part C of title IV of the Higher Education Act of 1965, as amended (HEA).

**DATES:** To participate in the Work-Colleges Program and to apply for funds for that program for the 2001-2002 award year, an eligible institution must mail or hand-deliver its "Institutional Application and Agreement for Participation in the Work-Colleges Program" to the Department on or before June 18, 2001.

**Note:** The Department will not accept the form by facsimile transmission. The form must be submitted to the Division of Campus-Based Operations in the Schools Channel at one of the addresses indicated in this notice.

#### ADDRESSES:

#### Applications and Agreements Delivered by Mail

An "Institutional Application and Agreement for Participation in the Work-Colleges Program" delivered by mail must be addressed to Mr. Richard Coppage, Division of Campus-Based Operations, Schools Channel, Work-Colleges Program, U.S. Department of Education, Portals Building, Suite 600D, 400 Maryland Ave, SW., Washington,

DC 20202-4331. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education. An institution is encouraged to use certified or at least first class mail.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

If an "Institutional Application and Agreement for Participation in the Work-Colleges Program" is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

Institutions that submit an "Institutional Application and Agreement for Participation in the Work-Colleges Program" after the closing date of June 18, 2001, will not be considered for participation or funding under the Work-Colleges Program for award year 2001-2002.

#### Applications and Agreements Delivered by Hand

If an institution delivers its "Institutional Application and Agreement for Participation in the Work-Colleges Program" by hand, it must deliver the institutional application and agreement to Mr. Richard Coppage, Division of Campus-Based Operations, Schools Channel, Work-Colleges Program, U.S. Department of Education, Portals Building, Suite 600D, 400 Maryland Ave, SW., Washington DC 20202-4331.

Hand-delivered institutional applications and agreements will be accepted between 8 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An "Institutional Application and Agreement for Participation in the Work-Colleges Program" for the 2001-2002 award year that is delivered by hand will not be accepted after 4:30 p.m. on June 18, 2001.

**SUPPLEMENTARY INFORMATION:** Under the Work-Colleges Program, the Secretary allocates funds when available for that program to eligible institutions. The Secretary will not allocate funds under the Work-Colleges Program for award year 2001-2002 to any eligible institution unless the institution files its "Institutional Application and Agreement for Participation in the

Work-Colleges Program" by the closing date.

To apply for participation and funding under the Work-Colleges Program, an institution must satisfy the definition of "work-college" in section 448(e) of the HEA. The term "work-college" under the HEA means an eligible institution that (1) is a public or private nonprofit institution with a commitment to community service; (2) has operated a comprehensive work-learning program for at least two years; (3) requires all resident students to participate in a comprehensive work-learning program and the provision of services as an integral part of the institution's educational program and as part of the institution's educational philosophy; and (4) provides students participating in the comprehensive work-learning program with the opportunity to contribute to their education and to the welfare of the community as a whole.

#### Applicable Regulations

The following regulations apply to the Work-Colleges Program:

- (1) Student Assistance General Provisions, 34 CFR part 668.
- (2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.
- (3) Federal Work-Study Programs, 34 CFR part 675.
- (4) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.
- (5) New Restrictions on Lobbying, 34 CFR part 82.
- (6) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.
- (7) Drug and Alcohol Abuse Prevention, 34 CFR part 86.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Coppage, Division of Campus-Based Operations, Schools Channel, Work-Colleges Program, U.S. Department of Education, Portals Building, Suite 600D, 400 Maryland Ave, SW., Washington DC Telephone (202) 708-4694. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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**Program Authority:** 42 U.S.C. 2756b.

Dated: May 31, 2001.

**Greg Woods,**

*Chief Operating Officer, Office of Student Financial Assistance.*

[FR Doc. 01-14384 Filed 6-6-01; 8:45 am]

**BILLING CODE 4000-01-U**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission**

[Docket No. IC01-720-000; FERC-720]

**Proposed Information Collection and Request for Comments**

June 1, 2001.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Request for Office of Management and Budget emergency processing of proposed information collection and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is providing notice of request to the Office of Management and Budget (OMB) for emergency processing of a proposed collection of information in connection with the New York electricity markets, and is soliciting public comment on that information collection.

**DATES:** Comments are requested on or before June 8, 2001.

**ADDRESSES:** Send comments: (1) Michael Miller, Officer of the Chief Information Officer, CI-1, Federal Energy Regulatory Commission, 888 First, NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208-1415 and by e-mail at

[mike.miller@ferc.fed.us](mailto:mike.miller@ferc.fed.us); and (2) Amy Farrell, FERC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202 NEOB, 725 17th Street NW, Washington, DC 20503. Ms. Farrell may be reached by telephone at (202) 395-7318 or by fax at (202) 395-7285.

**FOR FURTHER INFORMATION CONTACT:** Connie Caldwell, Office of the General Counsel, Federal Energy Regulatory Commission, (202) 208-2027.

**SUPPLEMENTARY INFORMATION:** The Federal Power Act directs the Commission to ensure just and reasonable rates for transmission and wholesale sales of electricity in interstate commerce. See 16 U.S.C. 824e(a). To enable the Commission to fulfill this duty the Federal Power Act also authorizes the Commission to conduct investigations of, and collect information from, public utilities. See 16 U.S.C. 825, 825c, 825f, and 825j.

Commission staff has reason to believe that the New York electricity market may experience prices at very high levels during the summer season. Several recent surveys and reports cite New York as an area likely to experience high electricity prices as we move into the summer. For example, a study published in May, 2001, by Xenergy entitled "Wholesale Market Structure," found that "fundamental supply/demand factors \* \* \* are the greatest contributor to high prices and other market problems" in New York. The North American Electric Reliability Council's "Summer Assessment for 2001" cites New York as an area that should be closely watched over the next few months. See <http://www.nerc.com>. In March, 2001, the NYISO issued a report titled, "Power Alert: New York's Energy Crossroads," which reported the possibility of an impending electricity crisis in New York due to a growing imbalance in the supply and demand of electricity. This report may be found at <http://www.nyiso.com>. The *Wall Street Journal* has reported that "New York City already displays some of the early warning signs observed in California in the spring of 2000. The city's grid operator estimates that this summer demand could outstrip supply by as much as 9%, raising the specter of blackouts." See *Wall Street Journal*, April 26, 2001.

If demand does in fact exceed supply this summer, forced and scheduled outages by electric generators in New York, particularly in the New York City and Long Island areas, may contribute to or be the sole cause of the high prices that are bound to accompany a supply/demand imbalance. In addition to

causing higher prices, the outages limit the availability of electric power, and may lead to the necessity for blackouts to preserve transmission and distribution systems. If increased summer demand is not matched by generation supply in New York, these problems are likely to occur.

Commission staff believes that it is in the public interest to monitor generation outages in New York to assess their causes, particularly during the summer cooling season when electricity demand is at its highest. Commission staff proposes to do so by requesting that selected generators in the state of New York electronically provide to the Commission information on total or partial generation unit outages within 24 hours of their occurrence, whether scheduled, forced or otherwise.

Specifically, Commission staff will be requesting information only from generators that own, operate, or control in New York an individual generation unit with a generating capacity of 30 MW or more or generation units aggregating capacity of 50 MW or more.

For the purposes of this data collection, Commission staff considers an outage partial if it reduces the available output of a generation unit below its nameplate rated capacity or below the New York Independent System Operator's (NYISO's) Dependable Maximum Net Capability (DMNC) for the unit. The Commission staff will treat information provided by the generators as non-public pursuant to the provisions of 18 CFR 1b.9.

Commission staff will be requesting that the information be provided through a template that will be mailed to the generators and that can be accessed from the FERC website at <http://www.ferc.gov/>. The Commission staff is requesting that the generators send the outage information to an electronic address, [ny.outages@ferc.fed.us](mailto:ny.outages@ferc.fed.us). To further assist monitoring efforts, Commission staff will be requesting that generators provide the information on the template for all outages that are current as of the date they receive the letter containing the template. Although Commission staff will be requesting information from municipalities concerning their generation units in New York, Commission staff is requesting such data on a voluntary basis and is not questioning the jurisdictional status of those entities.

Because Commission staff is requesting information from a large number of generators (over 100) concerning future outages, the data collection is subject to the Paperwork Reduction Act, which requires OMB to

review certain federal reporting requirements. 44 U.S.C. 3507. In light of the potential for critical events to occur in the New York electricity market caused by generation outages, particularly during the summer cooling season, Commission staff will be requesting emergency processing of this proposed information collection. If the Commission followed the regular provisions of the Paperwork Reduction Act, Commission staff would be unable to collect this information until most of the summer cooling season was over.

Commission staff estimates that between 100 and 110 generators could be subject to this reporting request, and that during any given week, only 15–25 of those entities would likely have an outage to report. However, many entities own several generation units, so the number of entities actually submitting reports would vary. Based on historical average outage rates, compiled by NERC for 1995 through 1999 (see <http://www.nerc.com/~gads>), of U.S. and Canadian generation facilities and the number of plants to be monitored, staff estimates that about 2,900 reports would be filed during the 180 days the reporting request would be in place.

Because Commission staff has created a pre-existing template, generators need not take any time to develop a reporting format. Commission's staff estimates that it would take each generator approximately one hour to fill out an initial report for a generation unit, but, as most of the unit information will remain constant (such as its name, fuel type and megawatt rating), it should take 20 minutes or less to fill out and send each subsequent report.

The outage reports are to be submitted electronically within 24 hours of when a total or partial unit outage begins and ends. As stated above, based on information compiled by the NERC, staff estimates that 2,900 reports may be filed under this information collection requirement. Assuming that number of reports are filed during the 180 days for which this information collection is requested, the total number of hours it would take to comply with the reporting requirement would be approximately 110 hours for initial submission and 930 hours for subsequent submissions, assuming 20 minutes per submission). Commission staff estimates a cost of \$50 per hour for complying with the reporting requirement, based on salaries for professional and clerical staff, as well as direct and indirect overhead costs. Therefore, the total estimated cost of compliance would be \$52,000.

Commission staff will submit this reporting requirement to OMB for approval. OMB's regulation describe the

process that federal agencies must follow in order to obtain OMB approval of reporting requirements. See 5 CFR Part 1320. The standards for emergency processing of information collections appear at 5 CFR 1320.13. If OMB approves a reporting requirement, it will assign an information collection control number to that requirement. If a request for information subject to OMB review does not display a valid control number, or if the agency has not provided a justification as to why the control number cannot be displayed, then the recipient cannot be penalized for failing to respond.

OMB requires federal agencies seeking approval of reporting requirements to allow the public an opportunity to comment on the proposed reporting requirement. 5 CFR 1320.5(a)(1)(iv). Therefore, comments are being solicited on:

- (1) Whether the collection of the information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
- (2) The accuracy of Commission staff's estimate of the burden of the collection of this information, including the validity of the methodology and assumptions used;
- (3) The quality, utility, and clarity of the information to be collected; and
- (4) How to minimize the burden of the collection of this information on respondents, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01–14351 Filed 6–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01–432–000]

#### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2001.

Take notice that on May 29, 2001, Columbia Gas Transmission Corporation (Columbia) filed to its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet bearing a proposed effective date of June 1, 2001:

First Revised First Revised Sheet No. 500B

Columbia states that is submitting FTS Service Agreement Nos. 2000–10–

30–0026 and 2000–10–30–0031 which are agreements for firm transportation to be provided by Columbia to first Energy Trading Services Inc. (First Energy). As directed by the Commission's order in Columbia's Docket No. CP01–70, Columbia is re-filing the First Energy service agreements as non-conforming service agreements to be effective June 1, 2001. Columbia Gas Transmission Corp., 95 FERC ¶ 61,218, mimeo at p. 15 and p. 18. Columbia filed these service agreements on March 27, 2001 in Docket No. CP01–70. As stated in Columbia's Docket No. CP01–70, these firm service arrangements enable First Energy to generate electricity at its West Lorain Generating Station effective June 1.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. The filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01–14341 Filed 6–6–01; 8:45 am]

**BILLING CODE 6717–01–M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****[Docket No. CP01-375-000]****East Tennessee Natural Gas Company;  
Notice of Application**

June 1, 2001.

Take notice that on May 25, 2001, East Tennessee Natural Gas Company (East Tennessee), 5400 Westheimer Court, Houston, Texas 77056-5310, filed with the Commission in Docket No. CP01-375-000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for authorization to construct, install, own, operate, and maintain various pipeline facilities in Tennessee needed to provide firm transportation service to the Tennessee Valley Authority (TVA), all as more fully set forth in the amendment which is open to the public for inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

East Tennessee proposes to undertake the following activities:

a. Construct 8.74 miles of 20-inch diameter pipeline loop and 9.63 miles of 16-inch diameter pipeline loop on East Tennessee's existing pipeline right of way (ROW), and construct 8.09 miles of 20-inch diameter pipeline loop adjacent to East Tennessee's existing pipeline ROW in Moore, Lewis, Lawrence, Giles, Maury, and Franklin Counties, Tennessee;

b. Hydrostatically test one pipeline section of approximately 5.44 miles of 12-inch diameter pipeline on Line 3200 located on the existing East Tennessee system in Franklin County to increase the maximum allowable operating pressure (MAOP);

c. Install a 6,270 horsepower (HP) compressor unit, to be located at Station 3206 in Marshall County, Tennessee; and two regulators, one at Station 3206 in Marshall County, and one at the Elk River Estill Springs Meter Station in Franklin County;

d. Replace aerodynamic assemblies for two existing units at Stations 3206 and two existing units at Station 3209 in Franklin County with new aerodynamic assemblies;

e. Construct one new compressor station, Station 3202, in Hickman and Lewis Counties, Tennessee, by installing three 1,085 HP compressor units;

f. Construct one new gas meter station in Franklin County; and,

g. Install associated valves, piping, and appurtenant facilities.

East Tennessee seeks all necessary certificate authority to construct, own, operate, and maintain the above mentioned facilities, collectively referred to as the TVA Project. East Tennessee also seeks authorization to establish an initial section 7(c) rate for the proposed incremental facilities. The TVA Project facilities would allow East Tennessee to provide 86,000 Dekatherm equivalent of natural gas per day (Dth/d) in firm transportation service for the TVA. East Tennessee states that it would provide service to the TVA pursuant to East Tennessee's existing open access FERC Rate Schedule FT-A. East Tennessee also states that it would finance the estimated \$44,376,000 construction cost for the proposed facilities from funds on hand.

Any questions regarding the application should be directed to Steven E. Tillman, Director, Regulatory Affairs, East Tennessee Natural Gas Company, P.O. Box 1642, Houston, Texas 77251-1652, phone number (713) 627-5113.

There are two to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 22, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14340 Filed 6-6-01; 8:45 am]

**BILLING CODE 6717-01-M**

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****[Docket No. RP97-287-055]****El Paso Natural Gas Company; Notice  
of Negotiated Rate**

June 1, 2001.

Take notice that on May 24, 2001, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1-A, the following tariff sheets to become effective June 1, 2001:

Thirty-Fourth Revised Sheet No. 30  
Twenty-Seventh Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement two new negotiated rate contracts and update a company name change pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95-6-000 and RM96-7-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14342 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****[Docket No. RP01-430-000]****Florida Gas Transmission Company;  
Notice of Tariff Filing**

June 1, 2001.

Take notice that on May 25, 2001, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to become effective June 25, 2001:

Second Revised Sheet No. 135A

FGT states that it is filing the revised tariff sheet to update the permissible types of transportation discounts that may be granted by FGT, in a manner consistent with FERC approved discounts on other pipelines. In Docket No. RP99-353-000, Florida Gas Transmission Company, 88 FERC Paragraph 61,093 (1999), the Commission approved revised tariff sheets filed by FGT on June 23, 1999, granting FGT the right to use six (6) types of transportation discounts without having to file the discount agreement as a material deviation from the pro forma service agreements, consistent with the Commission's ruling in Natural Gas Pipeline Company of America, 84 FERC ¶ 61,099 (1998) and subsequent orders.

FGT further states that the revised tariff sheet filed herewith further modifies the General Terms and Conditions (GTC) of FGT's Tariff which are applicable to the various transportation Rate Schedules to add language thereto to provide for another permissible form of discounting.

FGT states that in addition its ability to agree to a basic discount from the stated maximum rates, FGT proposes to revise the GTC by adding additional language to provide for upward or downward adjustments to rate components to achieve an agreed upon overall rate so long as all rate components remain within their respective minimum and maximum amounts. FGT further states that the tariff language proposed herein incorporates the requirement that such adjustments made to discrete rate components not exceed the maximum amount nor be less than the minimum amount for that component established as the basis of the underlying rate design method (straight-fixed variable), and that they be made only prospectively, and that they not affect the determination of refunds that may be due under applicable law for the time

prior to the adjustment of such components.

FGT states that copies of the filing were mailed to all customers served under the rate schedules affected by the filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14348 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory  
Commission****[Docket No. RP01-431-000]****Gulf South Pipeline Company, LP;  
Notice of Report of Net Revenues**

June 1, 2001.

Take notice that on May 29, 2001, Gulf South Pipeline Company, LP (Gulf South) tendered for filing its report of the net revenues attributable to the operation of its cash-in/cash-out program for an annual period beginning April 1, 2000 and ending March 31, 2001.

Gulf South states that this filing reflects its annual report of the net revenues attributable to the operation of its cash-in/cash-out program used to resolve transportation imbalances. The report shows a negative cumulative position that will continue to be carried

forward and applied to the next cash-in/cash-out reporting period as provided in Gulf South's tariff, Section 20.1(E)(i) of the General Terms and Conditions.

Gulf South states that copies of this filing have been served upon Gulf South's customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before June 8, 2001. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14349 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-361-001]

#### Northern Border Pipeline Company; Notice of Compliance Filing

June 1, 2001.

Take notice that on May 25, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective May 1, 2001:

Fifth Revised Sheet Number 105  
Fourth Revised Sheet Number 235B  
Original Sheet Number 235C

The purpose of this filing is to comply with the Commission's order dated April 25, 2001 in Docket No. RP01-361-000 (95 FERC ¶ 61,109).

Northern Border states that copies of this filing have been served on all parties on the Commission's service list for this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14344 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-373-002]

#### Northern Border Pipeline Company; Notice of Compliance Tariff Filing

June 1, 2001.

Take notice that on May 24, 2001, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective May 9, 2001:

Third Revised Sheet Number 270  
Second Revised Sheet Number 271

Northern Border states that the purpose of this filing is to comply with the order of the Commission in this proceeding dated May 9, 2001 at 95 FERC ¶61,187.

Northern Border states that copies of this filing have been sent to all parties on the service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14345 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-428-000]

#### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2001.

Take notice that on May 25, 2001, Northern Natural Gas Company (Northern) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective June 25, 2001: Fourth Revised Sheet No. 303

The revised tariff sheet adds another permissible type of transportation discount to Northern's General Terms and Conditions by providing for upward or downward adjustments to rate components to achieve an agreed-upon overall rate so long as all rate components remain within their respective minimum and maximum amounts.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14346 Filed 6-6-01; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP00-506-006]

#### Northwest Pipeline Corporation; Notice of Compliance Filing

June 1, 2001.

Take notice that on May 25, 2001, Northwest Pipeline Corporation (Northwest) submitted supplemental information related to its proposed policy on partial capacity turnbacks.

Northwest states that the purpose of this filing is to comply with the Commission's Order on Compliance Filing dated April 25, 2001 in Docket Nos. RP00-506-003 and RP00-506-004.

Northwest states that a copy of this filing has been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance). Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
*Secretary.*

[FR Doc. 01-14343 Filed 6-6-01; 8:45 am]

**BILLING CODE 6717-01-M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP99-615-001]

#### Petal Gas Storage, L.L.C.; Notice of Amendment

June 1, 2001.

Take notice that on May 25, 2001, Petal Gas Storage, L.L.C. (Petal), 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77002, filed in Docket No. CP99-615-001, an application pursuant to section 7(c) of the Natural Gas Act to amend the certificate of public convenience and necessity issued March 15, 2000 in Docket No. CP99-615-000, to extend the timetable to complete construction of facilities, and to request certain other authorizations, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims.htm> (please call (202) 208-2222 for assistance).

Petal states that it requests authorization to amend the certificate previously issued by the Commission on March 15, 2000, in Docket No. CP99-615-000, so that Petal may modify the construction procedures and size of Cavern Nos. 6 and 7. Petal states that the changes in cavern size and construction are necessary because expansion of the two caverns has been delayed due to unforeseen circumstances. Petal states that although the working gas and cushion gas attributable to each cavern will change, the amendment will not change the total certificated capacity and working gas levels for the two caverns combined.

Petal states that it further requests authorization to move its cushion gas as may be necessary for operational purposes, or in the alternative, as necessary to complete the construction authorized in this docket pursuant to the revised construction method requested in the amendment.

Any questions concerning this application may be directed to David E. Maranville, Senior Counsel, El Paso Energy Corporation, 1001 Louisiana Street, P.O. Box 2511, Houston, Texas 77002-2511, call (713) 420-3525.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before June 11, 2001, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of

the Commission's review process, a final Commission order approving or denying a certificate will be issued.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-14376 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. RP01-429-000]

#### Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

June 1, 2001.

Take notice that on May 25, 2001, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet; proposed to be effective June 25, 2001:

Thirteenth Revised Sheet No. 96

Transwestern states that the revised tariff sheet adds another permissible type of transportation discount to Transwestern's General Terms and Conditions by providing for upward or downward adjustments to rate components to achieve an agreed-upon overall rate so long as all rate components remain within their respective minimum and maximum amounts.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested States Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims/htm> (call 202-208-2222 for assistance). Comments, protests, and

interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-14347 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP01-180-000]

#### Cypress Natural Gas Company, L.L.C.; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Cypress Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

June 1, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Cypress Pipeline Project involving construction and operation of facilities by Cypress Natural Gas Company, L.L.C. (Cypress) in Chatham, Bryan, Liberty, Long, McIntosh, Glynn, Camden, and Charlton Counties, Georgia and Nassau, Duval, and Clay Counties, Florida.<sup>1</sup> These facilities would consist of about 166 miles of 24-inch-diameter pipeline and 13,000 horsepower (hp) of compression. This EIS will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas

Facility On My Land? What Do I Need To Know?" should have been attached to the project notice Cypress provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website ([www.ferc.gov](http://www.ferc.gov)).

This notice is being sent to Federal, state, and local government agencies; affected landowners; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries and newspapers; and the Commission's list of parties to the proceeding. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Additionally, with this notice we<sup>2</sup> are asking other Federal, state, local and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated Cypress' proposal relative to their responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described later in this notice.

#### Summary of the Proposed Project

Cypress proposes to construct and operate new pipeline facilities to provide approximately 310 million cubic feet per day of natural gas capacity to the project area in southeastern Georgia and northern Florida. Cypress seeks authority to construct and operate:

- About 166 miles of 24-inch-diameter natural gas pipeline in Chatham, Bryan, Liberty, Long, McIntosh, Glynn, Camden, and Charlton Counties, Georgia, and Nassau, Duval, and Clay Counties, Florida;
- 13,000 hp of electric-drive compression at the new Waynesville Compressor Station in Glynn County, Georgia;
- Five new meter stations, including:
  - Port Wentworth Meter Station in Chatham County, Georgia;
  - Atlanta Gas Light Meter Station in Glynn County, Georgia;
  - South Georgia Natural Gas Meter Station in Nassau County, Florida;

<sup>1</sup>Cypress' application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

<sup>2</sup>"We," "us," and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

—Brandy Branch Power Plant Meter Station in Duval County, Florida; and  
 —Florida Gas Transmission Meter Station in Clay County, Florida;

- A pig launcher facility at the Port Wentworth Meter Station, a pig launcher and pig receiver facility at the Waynesville Compressor Station, and a pig receiver facility at the Florida Gas Transmission Meter Station; and

- 14 mainline valves.

The location of the project facilities is shown in appendix 1.<sup>3</sup>

#### Land Requirements for Construction

Construction of the proposed facilities would require about 2,153.5 acres of land. Following construction, about 730.8 acres would be maintained as permanent right-of-way and new aboveground facility sites. The remaining 1,422.7 acres of temporary workplace would be restored and allowed to revert to its former use.

The nominal construction right-of-way for the pipeline would be 95 feet wide, with 50 feet retained as permanent right-of-way. About 92 percent of the pipeline route would parallel existing transportation or energy rights-of-way.

The Waynesville Compressor Station, pig launcher and receiver facilities, and a mainline valve would be constructed within a 36-acre site that Cypress intends to acquire. One acre of land would be required for each of the five meters stations. Pig launcher and receiver facilities and mainline valves to be constructed at the Port Wentworth and Florida Gas Transmissions Meter Stations would be located within the respective 1-acre meter station sites and would not require additional land. The remaining mainline valves would be installed at required intervals along the route within the permanent right-of-way.

#### The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to solicit and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping

process is to focus the analysis in the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EIS. All comments received are considered during the preparation of the EIS.

Our independent analysis of the issues will be in the Draft EIS, which will be mailed to Federal, state, and local agencies; public interest groups; interested individuals; affected landowners; newspapers; libraries; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing the Final EIS. The Final EIS will include our response to all comments received.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6.

#### Currently Identified Environmental Issues

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed project. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Cypress. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
  - Assessment of potential geological hazards, including sinkholes.
  - Potential impact on mineral resources and mining operations.
  - Effect on hydric soils and soils with high potential for compaction.
- Water Resources and Wetlands
  - Effect on groundwater resources.
  - Potential effect on 53 perennial streams, 38 intermittent streams, and 3 ponds crossed by or close to the route.
  - Effects on waterbodies designated under Federal or state programs, including the Altamaha, Satilla, and St. Marys Rivers.
  - Effects on approximately 627 acres of wetlands.
- Vegetation and Wildlife
  - Effect on vegetation, wildlife, and fisheries resources, including planted pine and forested habitats.
  - Effect on the Ralph E. Simmons Memorial State Forest.
  - Vegetative Nuisance species.

- Endangered and Threatened Species
  - Potential effect on 18 federally listed species (all of which are also state-listed species), including the red-cockaded woodpecker, eastern indigo snake, flatwoods salamander, shortnose sturgeon, and Florida scrub jay.
- Potential effect on an additional 65 state-listed species.
  - Cultural Resources
- Effect on historic and prehistoric sites.
- Native American and tribal concerns.
  - Land Use
- Impact on residential areas.
- Effect on existing and future land use along the proposed right-of-way, including forested wetlands and pine plantations.
- Effect on recreation and public interest areas, including the Fort Stewart Military Reservation, Sansavilla Wildlife Management Area, Paulk's Pasture Wildlife Management Area, Ralph E. Simmons State Forest, the Savannah-Ogeechee Canal, and the Jacksonville-Baldwin Rail Trail.
- Visual effect of the aboveground facilities on surrounding areas.
  - Socioeconomics
- Effects of construction workforce demands on public services and temporary housing.
  - Air Quality and Noise
- Potential impact of pipeline construction on local air quality and noise environment.
- Effects on local noise environment from construction and operation of the Waynesville Compressor Station.
  - Reliability and Safety
- Assessment of public safety factors associated with natural gas facilities.
  - Alternatives
- Assessment of alternative routes, systems, or energy sources to reduce or avoid environmental impacts.
- Route alternatives or potential deviations to minimize land use development concerns in the Chatham County, Georgia area.
  - Cumulative Impacts
- Assessment of the effect of the proposed project when combined with other projects that have been or may be proposed in the same region and similar time frame.

We have made a preliminary determination that no nonjurisdictional facilities are associated with the proposed project.

#### Public Participation

You can make a difference by providing us with your specific

<sup>3</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 1, PJ-11.1.
- Reference Docket No. CP01-180-000.
- Mail your comments so that they will be received in Washington, DC on or before July 9, 2001.

Comments, protests and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

#### Public Scoping Meetings and Site Visit

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings that the FERC will conduct in the project area. The locations and times for these meetings are listed below.

- Tuesday, June 26, 2001, 7:00 p.m.—Quality Inn and Suites, 17 Gateway Boulevard East, Savannah, Georgia 31419, (912) 925-2700.
- Wednesday, June 27, 2001, 7:00 p.m.—Embassy Suites, 500 Mall Boulevard, Glynn Place Mall, Brunswick, Georgia 31525, (912) 264-6100.
- Thursday, June 28, 2001, 7:00 p.m.—Clarion Hotel Airport, Conference Center, 2101 Dixie Clipper Drive, Jacksonville, Florida 32218, (904) 741-1997.

The public scoping meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project Cypress

representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the EIS. A transcript of each meeting will be made so that your comments will be accurately recorded.

On June 26 through 28, 2001 we will also be conducting a site visit to the project area. This will be an on-the-ground inspection, conducted by automobile on public roads, or where access to private property has been granted (specific locations to be determined later). Anyone interested in participating in the site visit may contact the Commission's Office of External Affairs identified at the end of this notice for more details and must provide their own transportation.

#### Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenor play a more formal in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).<sup>4</sup> Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

#### Availability of Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208-1088 or on the FERC website ([www.ferc.gov](http://www.ferc.gov)) using the "RIMS" link to information in this docket number. Click on the "RIMS"

<sup>4</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208-2474.

David P. Boergers,

Secretary.

[FR Doc. 01-14339 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP01-176-000, Docket No. CP01-179-000]

#### Georgia Strait Crossing Pipeline LP; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Georgia Strait Crossing Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings and Site Visit

June 1, 2001.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of Georgia Strait Crossing Pipeline LP's (GSX-US) proposed Georgia Strait Crossing (GSX) Project in Whatcom and San Juan Counties, Washington.<sup>1</sup> The proposed facilities would transport natural gas from existing pipeline systems near Sumas, Washington to the United States/Canada border in Boundary Pass.<sup>2</sup> The GSX Project would involve the construction and operation of about 47 miles of 20- and 16-inch-diameter pipeline and a new 10,302-horsepower (hp) compressor station. The FERC will use

<sup>1</sup> GSX-US' applications in Docket Nos. CP01-176-000 and CP01-179-000 were filed with the Commission under sections 7(c) and 3 of the Natural Gas Act respectively.

<sup>2</sup> Georgia Strait Crossing Pipeline Ltd (GSX-Canada) proposes to construct a pipeline to transport the natural gas delivered to the Canadian border by GSX-US to Vancouver Island for use in new power plants. This proposal is currently under review by the National Energy Board in Canada. The location of the Canadian facilities is shown in Appendix 1.

this EIS in its decision making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a GSX-US representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility on My Land? What Do I Need To Know?" should have been attached to the project notice GSX-US provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. The fact sheet is available for viewing on the FERC Internet website ([www.fer.gov](http://www.fer.gov)).

This notice is being sent to affected landowners along GSX-US' proposed route; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effect; local libraries and newspapers; and the Commission's list of parties to the proceeding. We<sup>3</sup> encourage government representatives to notify their constituents of this proposed action and encourage them to comment on their areas of concern. Additionally, with this notice we are asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues in the project area to cooperate with us in the preparation of the EIS. These agencies may choose to participate once they have evaluated GSX-US' proposal relative to their responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described later in this notice.

### Summary of the Proposed Project

The GSX Project would transport 94,000 decatherms per day of natural gas from proposed interconnect facilities with the existing Westcoast Energy Inc. pipeline at the United States/Canada border and Northwest

Pipeline Corporation (Northwest) pipeline near Sumas, Washington to an interconnect with a pipeline proposed by GSX-Canada in Boundary Pass.

GSX-US' proposed action consists of the construction and operation of:

- Pipeline interconnect facilities between the proposed GSX system and the existing Westcoast Energy Inc. system at the international border between the United States and Canada, including a receipt point meter station and 500 feet of 20-inch-diameter upstream piping located adjacent to Northwest's existing Sumas Compressor Station in Whatcom County, Washington (additional metering facilities would be installed at the same location to provide for a secondary source of gas from the Northwest system);
- About 32 miles of 20-inch-diameter pipeline extending from the interconnect facilities at the international border between the United States and Canada near Sumas, Washington, across Whatcom County, to a new compressor station (Cherry Point Compressor Station) near Cherry Point, Washington;
- A new compressor station (GSX Cherry Point Compressor Station) consisting of one 10,302-hp two-stage compressor package near Cherry Point, Washington;
- About 1 mile of 16-inch-diameter pipeline extending from the GSX Cherry Point Compressor Station to the beginning of the marine portion of the pipeline at the edge of the Strait of Georgia; and
- About 14 miles of 16-inch-diameter marine pipeline extending from the edge of the Strait of Georgia near Cherry Point, Washington to the edge of the international border between the United States and Canada at a point about midway between the west end of Patos Island (Washington) and the east end of Sturna Island (British Columbia) in Boundary Pass.

The general location of the major project facilities is shown in appendices 1 and 2.<sup>4</sup>

Because the project involves siting, constructing, operating, and maintaining pipeline facilities at the international border between the United States and Canada, GSX-US requested a

<sup>4</sup> The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, or call (202) 208-1371. For instructions on connecting to RIMS, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Presidential Permit in Docket No. CP01-179-000.

The GSX Project is scheduled to be in service by late October 2003. Preliminary construction activities, including work at the GSX Cherry Point Compressor Station and the shoreline horizontal directional drill segment, are scheduled to take place during the late summer/fall of 2002. Construction of the majority of the project facilities, including the onshore and offshore pipeline segments and the aboveground facilities, would be completed during the spring/summer/fall of 2003. The approximate duration of construction would be 200 to 250 days for the compressor station and 90 to 150 days for the pipeline.

### Land Requirement for Construction

Construction of onshore pipeline facilities would affect a total of about 410 acres of land in Whatcom County, Washington. Following construction, about 200 acres would be retained as permanent right-of-way. The remaining 210 acres of temporary work space would be restored and allowed to revert to former use.

GSX-US proposes to use a 100-foot-wide construction right-of-way unless topography or other conditions require modifications. In addition to the 100-foot-wide construction right-of-way, temporary extra work space would be necessary at most improved road and railroad crossings, for side hill cuts, areas requiring deeper burial, and additional spoil storage areas. A 50-foot-wide permanent right-of-way would be acquired. About 74 percent of the onshore pipeline route would parallel existing pipeline, road, railroad, or powerline rights-of-way.

GSX-US indicates that construction of its offshore pipeline facilities would disturb about 46 acres. Based on a 3-foot-wide permanent marine right-of-way, GSX-US estimates that the offshore permanent right-of-way would be 5.1 acres.

The GSX-US receipt point facilities would be constructed on 17.9 acres of land of which 10.0 acres would be within Northwest's existing Sumas Compressor Station site. The GSX Cherry Point Compressor Station would be constructed on a 9.6-acre site. Valves and valve access roads (outside of the compressor station and interconnect sites) would occupy 1.6 acres, of which all but 0.3 acre would be within the construction area for the pipeline facilities.

Disturbances related to modifying access roads for pipeline construction would affect about 7.2 acres. Pipe storage/contractor yard or rail sidings

<sup>3</sup> "We," "us," "our" refer to the staff of the FERC's Office of Energy Projects.

would occupy 68.6 acres, of which 41.9 acres have been previously disturbed for other uses. Additional temporary work areas for the horizontal directional drill at Cherry Point would include 24.3 acres of which 8.9 acres would be within the Gulf Road right-of-way.

### The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to solicit and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the EIS on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of issues it will address in the EIS. All comments received are considered during the preparation of the EIS.

Our independent analysis of the issues will be in the Draft EIS, which will be mailed to Federal, state, and local agencies; elected officials; environmental and public interest groups; affected landowners and other interested individuals; Indian tribes; newspapers; libraries; and the Commission's official service list for this proceeding. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and revise the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received on the Draft EIS and will be used by the Commission in its decision-making process to determine whether to approve the project.

### Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by GSX-US. This preliminary list of issues may be changed based on your comments and our analysis.

- The area has a history of seismic activity.
- A total of 42 perennial or intermittent waterbodies (onshore) and the Strait of Georgia would be crossed.
- The project would cross commercial and recreational fisheries.
- The project may affect four federally listed threatened or endangered species and six species of special concern.

- The project may cross areas with significance to Native Americans.
- Construction would disturb 288 acres of agricultural land, 66 acres of non-forested open space, 47 acres of woodland, and 7 acres of developed land in Whatcom County, Washington.
- Construction would interfere with ship navigation, commercial fishing, and recreational boating in the Georgia Strait.
- The project crosses the Cherry Point State Aquatic Reserve.
- The GSX Cherry Point Compressor Station would have an impact on air quality and the noise environment of the area.

### Public Participation, Scoping Meetings, and Site Visit

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentator, your concerns will be addressed in the EIS and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send an original and two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Refer to Docket No. CP01-176-000;
- Label one copy of your comments for the attention of the Gas Group 2, PJ-11.2; and
- Mail your comments so that they will be received in Washington, DC on or before July 5, 2001.

Comments may also be filed electronically via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's website at <http://www.ferc.gov> under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create an account by clicking on "Login to File" and then "New User Account."

Everyone who responds to this notice or comments throughout the EIS process will be retained on our mailing list. If you do not want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS, please return the Information Request (appendix 4). You must send comments or return the Information

Request for your name to remain on the mailing list.

In addition to or in lieu of sending written comments, we invite you to attend the public scoping meetings that the FERC will conduct in the project area. The locations and times for these meetings are listed below.

- Tuesday, June 26, 2001, 7:00 p.m.—Lynden High School (cafeteria), 1201 Bradley Road, Lynden, Washington 98264, (360) 354-4401.
- Thursday, June 28, 2001, 7:00 p.m.—Senior Services San Juan Center, 589 Nash Street, Friday Harbor, Washington 98250, (360) 378-9102.

The public scoping meetings are designed to provide you with more detailed information and another opportunity to offer your comments on the proposed project. GSX-US representatives will be present at the scoping meetings to describe their proposal. Interested groups and individuals are encouraged to attend the meetings and to present comments on the environmental issues they believe should be addressed in the Draft EIS. A transcript of each meeting will be prepared so that your comments will be accurately recorded.

On Wednesday, June 27, 2001, our staff will also be visiting some project areas. The meeting location for the site visit will be announced at the Lynden scoping meeting. Anyone interested in participating in a site visit may contact the Commission's Office of External Affairs at (202) 208-1088 for more details and must provide their own transportation.

### Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceeding, known as an "intervenor." Intervenor play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3).<sup>5</sup> Only

<sup>5</sup> Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding that would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

#### Availability of Additional Information

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208-1008 or on the FERC website ([www.ferc.gov](http://www.ferc.gov)) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket#" from the RIMS Menu, and follow the instructions. For assistance the RIMS helpline can be reached at (202) 208-2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket#" from the CIPS Menu, and follow the instructions. For assistance the CIPS helpline can be reached at (202) 208-2474.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-14338 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Protests, Motions To Intervene, Recommendations, and Terms and Conditions

June 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Conduit Exemption.
- b. *Project No.:* 12021-000.
- c. *Date filed:* May 14, 2001.
- d. *Applicants:* Donald K. and Diane G. Campbell.
- e. *Name of Project:* Powercat Production Facility.
- f. *Location:* On a water supply pipeline of an existing fish rearing facility in Twin Falls County, Idaho. The water source is an existing artesian

well. The project would not occupy federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Thomas McCauley, P.O. Box 175, Buhl, ID 83316, (208) 543-8486.

i. *FERC Contact:* James Hunter, (202) 219-2839.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing comments, protests and motions to intervene:* July 6, 2001.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Please include the project number (P-12021-000) on any comments, protests, or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The project would consist of a turbine and a 20-kilowatt generator connected to a 10-inch-diameter water supply pipeline being installed to provide additional water to the fish rearing facility. The generating equipment would be supported by a concrete pad and would augment the existing power supply to the fish farm. The average annual generation would be 150,000 kilowatthours.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208-1371. This filing may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A copy is also available for inspection and

reproduction at the address shown in item h above.

*Development Application—*Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

*Notice of Intent—*A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

*Protests or Motions to Intervene—*Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

*Filing and Service of Responsive Documents—*The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary

circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

**David P. Boergers,**

*Secretary.*

[FR Doc. 01-14352 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene

June 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Preliminary Permit.
- b. *Project No.:* 11971-000.
- c. *Date filed:* April 18, 2001.
- d. *Applicant:* Symbiotics, LLC.

e. *Name and Location of Project:* The Ridgeway Dam Project would be located on the Uncompahgre River in Ouray County, Colorado. The project would be located on a federally-owned dam administered by the U.S. Bureau of Reclamation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630, fax (208) 745-7909.

h. *FERC Contact:* Tom Papsidero, (202) 219-2715.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Motions to intervene, protests, and comment may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Please include the project number (P-11971-000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would use the existing Ridgeway Reservoir which has a surface area of 1,109 acres and a storage capacity of 89,000 acre-feet at a normal elevation of 9,871 feet and include: (1) A proposed powerhouse with a total installed capacity of 2.5 megawatts; (2) a proposed-400-foot-long, 10-foot-diameter penstock; (3) a proposed 4-mile-long, 15 kv transmission line; and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 21.9 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling 202-208-1371. The application may be viewed on <http://www.ferc.fed.us/online/rims.htm>

(call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the address in item g above.

l. *Preliminary Permit—*Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comments date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Preliminary Permit—*Any qualified development applicant desiring a file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent—*A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specifies which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit—*A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene—*Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and

Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. **Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. **Agency Comments**—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-14353 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

June 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 11983-000.

c. *Date filed*: April 23, 2001.

d. *Applicant*: Symbiotics, LLC.

e. *Name and Location of Project*: The Paonia Dam Hydroelectric Project would be located on Muddy Creek in Gunnison County, Colorado. The project would utilize the U.S. Bureau of Reclamation's existing Paonia Dam.

f. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

g. *Applicant Contact*: Mr. Brent L. Smith, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745-8630.

h. *FERC Contact*: James Hunter, (202) 219-2839.

i. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Please include the project number (P-11983-000) on any comments or motions filed. The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project*: The proposed project, using the existing Paonia Dam, would consist of: (1) A proposed 800-foot-long, 10-foot-diameter steel penstock liner; (2) a proposed concrete powerhouse containing one 2.5-megawatt generating unit; (3) a proposed 2-mile-long, 15-kV transmission line; and (4) appurtenant facilities. The project would have an average annual generation of 14.3 GWh.

k. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on <http://www.ferc.fed.us/online/rims.htm> (call (202) 208-2222 for assistance). A

copy is also available for inspection and reproduction at the address in item g above.

l. **Preliminary Permit**—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. **Preliminary Permit**—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. **Notice of Intent**—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. **Proposed Scope of Studies under Permit**—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. **Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. **Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. **Agency Comments**—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-14354 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Notice of Request for Extension of Time To Commence and Complete Project Construction

June 1, 2001.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Request for Extension of Time.

b. *Project No.*: 10395-024.

c. *Date Filed*: April 26, 2001.

d. *Applicant*: City of Augusta, Kentucky.

e. *Name and Location of Project*: The Meldahl Hydroelectric Project is to be located at the U.S. Army Corps of Engineers' Meldahl Locks and Dam on the Ohio River in Bracken County, Kentucky.

f. *Filed Pursuant to*: Public Law 105-213 and sections 4.200(c) and 4.202(a) of the Commission's regulations.

g. *Applicant Contacts*: Mr. Edward J. Rudd, Counsel to the City of Augusta, P.O. Box 25, Brooksville, KY 41004, (606) 735-2950 and Mr. John R. Molm, Troutman Sanders, LLP, 401 9th Street, NW., Suite 1000, Washington, DC 20004-2134, (202) 274-2957.

h. *FERC Contact*: James Hunter, (202) 219-2839.

i. *Deadline for filing comments, protests, and motions to intervene*: July 6, 2001.

*All documents (original and eight copies) should be filed with*: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and motions to intervene may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at <http://www.ferc.fed.us/efi/doorbell.htm>.

Please include the project number (P-10395-024) on any comments or motions filed.

j. *Description of Proposal*: The Applicant requests an extension of time to July 31, 2003, to commence construction, as authorized by Public Law 105-213. In support of its request, the Applicant states that the project is not economical using a conventional construction design in the current market-based environment. The Applicant notes that it is exploring alternative designs, has published requests for such designs, and is awaiting responses. The Applicant states further that if it determines an alternative design to be feasible, it will seek appropriate amendments to its license. The deadline for completion of construction would be extended to July 31, 2005.

k. *Locations of the application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208-1371. The application may be viewed on the web at [www.ferc.fed.us/](http://www.ferc.fed.us/)

[www.ferc.fed.us/](http://www.ferc.fed.us/)online/rims.htm (Call (202) 208-2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

**Comments, Protests, or Motions to Intervene**—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

**Filing and Service of Responsive Documents**—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

**Agency Comments**—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**  
Secretary.

[FR Doc. 01-14355 Filed 6-6-01; 8:45 am]

BILLING CODE 6717-01-M

**DEPARTMENT OF ENERGY****Federal Energy Regulatory Commission****[Docket No. RM98-1-000]****Regulations Governing Off-the-Record Communications; Public Notice**

June 1, 2001.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at <http://www.ferc.fed.us/online/rims.htm> (call 202-208-2222 for assistance).

**Exempt**

1. EL00-95-017; 5-21-01; Barry R. Wallerstein.
2. Project No. 2042; 5-21-01; Timothy B. Bachelder.
3. CP00-165-000; 5-22-01; Roy L. Harris.
4. Project No. 2042-013; 5-22-01; Tim Welch.
5. CP00-232-001; 5-18-01; Kent P. Sanders.
6. CP00-40-002; 5-23-01; David L. Hankla.
7. Project No. 1986-010; 5-22-01; Dave Justus.

**David P. Boergers,***Secretary.*

[FR Doc. 01-14350 Filed 6-6-01; 8:45 am]

**BILLING CODE 6717-01-M****ENVIRONMENTAL PROTECTION AGENCY****[AL-056-200106; FRL-6993-4]****Adequacy Status of the Birmingham, AL, Ozone Attainment Demonstration for Transportation Conformity Purposes****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of adequacy.

**SUMMARY:** In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets in the Birmingham, Alabama ozone attainment demonstration submitted on November 1, 2000, are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Birmingham ozone nonattainment area must use the motor vehicle emissions budgets from the submitted ozone attainment demonstration for future conformity determinations.

**DATES:** This finding is effective June 22, 2001.

**FOR FURTHER INFORMATION CONTACT:** The finding and the response to comments will be available at EPA's conformity website: <http://www.epa.gov/oms/traq>, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity"). The SIP is available for public viewing at the United States Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. You can request a copy of the SIP submission by contacting Kelly Sheckler, Regulatory

Planning Section, United States Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303, Phone: (404) 562-9042, Fax: (404) 562-9019, E-mail: [Sheckler.Kelly@epa.gov](mailto:Sheckler.Kelly@epa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

This notice is simply an announcement of a finding that we have already made. EPA Region 4 sent a letter to the Alabama Department of Environmental Management on May 22, 2001, stating that the motor vehicle emissions budgets in the Birmingham, Alabama, ozone attainment demonstration for 2003 are adequate. This finding has been announced on EPA's conformity website referenced above.

EPA Region 4 received comments on the motor vehicle emissions budget for transportation conformity purposes contained in the Birmingham, Alabama, 1-hour ozone attainment demonstration. EPA Region 4 has prepared a response to those comments and has posted the response on the website referenced above.

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). This guidance was used in making our adequacy determination. The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate action to approve or disapprove the SIP. The SIP could later be disapproved for reasons unrelated to the transportation conformity even though the budgets have been deemed adequate.

**Authority:** 42 U.S.C. 7401-7671q.

Dated: May 21, 2001.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 01-14375 Filed 6-6-01; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 010746-009

*Title:* Columbus/P&O Nedlloyd Space Charter and Sailing Agreement

*Parties:*

Hamburg-Sud  
P&O Nedlloyd Limited

*Synopsis:* The proposed modification revises the geographic scope by deleting U.S. Pacific Coast ports and ports on various Pacific Islands and adding ports in Jamaica and Panama. The modification also updates and restates the agreement.

*Agreement No.:* 011683-001

*Title:* Contship/CMA CGM/Marfret Space Charter and Sailing Agreement

*Parties:*

CMA CGM, S.A.  
Compagnie Maritime Marfret  
Contship Containerlines Limited

*Synopsis:* The proposed amendment adds Jamaica and Panama to the agreement's scope, increases the number of vessels currently employed from 8 to 9, increases the maximum authorized from 10 to 12 vessels, and revises space allocations.

Dated: June 1, 2001.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 01-14296 Filed 6-6-01; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an

application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

#### Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Quick Freight Group, Inc. d/b/a

Accufreight Group, 147-35 Farmers Blvd., #201, Jamaica, NY 11434, Officers: Han Goo Choi, President (Qualifying Individual)

Sunfreight Cargo International, Inc.,

3541 Taffrail Lane, Oxnard, CA 93035, Officers: Paulino J. Gerardo, CFO (Qualifying Individual), Rolando P. Gipulan, President

Extrans International U.S.A., 758

Glasgow Avenue, 2nd Floor, Inglewood, CA 90301, Officers: Andy Song, Treasurer/Managing Director (Qualifying Individual), Kyu Seung Shin, CEO

Scorpion Express Line Corp., 4995 NW

72 Avenue, Suite 406, Miami, FL 33166, Officers: Ricardo Amable, President (Qualifying Individual), Raul Campos, Vice President

Hemisphere International Shipping,

Inc., P.O. Box 13401, Santvrie, Puerto Rico 00908, Officers: Wayne M. Siegel, Vice President (Qualifying Individual)

#### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

STS North America Inc., 12727 NE 20th

Street, Suite 23, Bellevue, WA 98005, Officers: Nickolay Nickolaychuk, Director (Qualifying Individual), Rustam Yuldashev, Director

#### Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

Shoreline Exprss, Inc., 13231 Eastern

Avenue, Suite No. 3 Palmetto, FL 34221, Officers: Mildred Reba Hunt, Secretary (Qualifying Individual), Timmy S. Adams, President

Dated: June 1, 2001.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 01-14297 Filed 6-6-01; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 2, 2001.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Harvard Bancorp, Inc.*, Harvard, Illinois; to acquire 100 percent of the voting shares of Hebron Bancshares, Inc., Hebron, Illinois, and thereby indirectly acquire voting shares of Hebron State Bank, Hebron, Illinois.

2. *Marshall & Ilsley Corporation*, Milwaukee, Wisconsin; to merge with National City Bancorporation, Minneapolis, Minnesota, and thereby indirectly acquire voting shares of National City Bank of Minneapolis, Minneapolis, Minnesota.

In connection with this application, Applicant also has applied to acquire Diversified Business Credit, Inc., Minneapolis, Minnesota, and thereby engage in extending credit and servicing

loans, pursuant to § 225.28(b)(1) of Regulation Y.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. *Peoples Home Holding, Inc.*, Greenbrier, Arkansas; to become a bank holding company by acquiring 80 percent of the voting shares of The Peoples Bank, Portland, Arkansas.

**C. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. *Cascade Financial Corporation*, Everett, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Cascade Bank, Everett, Washington.

Board of Governors of the Federal Reserve System, June 4, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01-14367 Filed 6-6-01; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated

or the offices of the Board of Governors not later than June 22, 2001.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. *Camden National Corporation*, Camden, Maine; to acquire Acadia Trust, National Association, Portland, Maine, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of Regulation Y, and Gouws Capital Management, Inc., Portland, Maine, and thereby engage in investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, June 4, 2001.

**Robert deV. Frierson**

*Associate Secretary of the Board.*

[FR Doc. 01-14366 Filed 6-6-01; 8:45 am]

**BILLING CODE 6210-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### Anesthetic and Life Support Drugs Advisory Committee Meeting; Cancellation

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

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is canceling the meeting of the Anesthetic and Life Support Drugs Advisory Committee scheduled for June 14 and 15, 2001. The meeting was announced in the **Federal Register** of May 3, 2001 (66 FR 22240). It will be rescheduled at a later date.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Topper, Center for Drug Evaluation and Research (HFD-21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-7001, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington, DC area), code 12529.

Dated: May 31, 2001.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 01-14293 Filed 6-6-01; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

[HCFA-R-118]

#### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the 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:* Peer Review Organization Contracts: Solicitation of Statements of Interest from In-State Organizations, General Notice and Supporting Regulations in 42 CFR 475; *Form No.:* HCFA-R-118 (OMB# 0938-0526); *Use:* This notice is a solicitation of sources sought for the procurement of medical review services. The information is required for potential contractors to demonstrate that they meet the statutory requirements as Peer Review Organizations. Compliance with these requirements is voluntary.; *Frequency:* As needed; *Affected Public:* Business or other for-profit; *Number of Respondents:* 53 *Total Annual Responses:* 53; *Total Annual Hours:* 1 hour.

To obtain copies of the supporting statement 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 and phone number, 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 30 days of this notice directly to

the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydtt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 30, 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. 01-14370 Filed 6-6-01; 8:45 am]

BILLING CODE 4120-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Child Health & Human Development (NICHD): Opportunity for Cooperative Research and Development Agreement (CRADA)

**SUMMARY:** The National Institute of Child Health & Human Development is seeking at least one Collaborator to participate in a CRADA to develop computer software that will assist in the diagnostic and clinical management of amenorrhea.

**DATES:** On or before August 6, 2001, interested parties should send informal written notice to the Technology Transfer Branch of the National Cancer Institute (NCI TTB), acting on behalf of NICHD, of the intent to file a formal proposal. Formal proposals must be submitted to the NCI TTB on or before September 5, 2001. Proposals submitted after September 5, 2001 will be considered, but only after any and all proposals submitted within the ninety-day period.

**ADDRESSES:** Inquiries and proposals regarding this opportunity should be addressed to: Bruce D. Goldstein, NCI Technology Transfer Branch, Executive Plaza South, 6120 Executive Blvd., Suite 450, Rockville, Maryland, 20852 (Phone 301-496-0477, Fax # 301-402-2117). Scientific questions should be addressed to: Dr. Lawrence Nelson, Head, NICHD Gynecologic Endocrinology Unit, Developmental Endocrinology Branch, Building 10, Room 10N262, Bethesda, MD 20892-1862 (Phone (direct) 301-402-6608; Phone (office) 301-496-4686; Fax 301-402-0574; email [Lawrence\\_Nelson@nih.gov](mailto:Lawrence_Nelson@nih.gov)).

**SUPPLEMENTARY INFORMATION:** A CRADA is the anticipated joint agreement to be entered into by NICHD and a collaborator pursuant to the Federal Technology Transfer Act of 1986 (15

U.S.C. 3710a), as amended. A CRADA is an agreement designed to enable certain collaborations between Government laboratories and non-Government laboratories. It is not a grant, and is not a contract for the procurement of goods/services. The NICHD is prohibited from transferring funds to a CRADA collaborator.

Under a CRADA, the NICHD can offer the selected collaborator access to facilities, staff, materials, and expertise. The collaborator may contribute facilities, staff, materials, expertise, and funding to the collaboration. A CRADA collaborator may elect an option to an exclusive or non-exclusive license to Government intellectual property rights arising under the CRADA, and may qualify as an inventor or co-inventor of new technology developed under the CRADA. Any party is eligible to participate; however, as between two or more sufficient, overlapping research proposals (where the overlap cannot be cured), the NICHD, as specified in 15 U.S.C. 3710a(c)(4), will give special consideration to small businesses, and will give preference to business units located in the U.S. that agree that products either embodying inventions made under the CRADA or produced through the use of such inventions will be manufactured substantially in the United States. In all other respects, the decision whether to begin negotiating a particular CRADA will turn on how well the proposal addresses the selection criteria below and how closely the proposed research matches the research interests of the NICHD.

The NICHD's general objectives for all CRADAs are the rapid publication of research findings, and the timely commercialization of prognostic, diagnostic, or therapeutic products. Specific CRADA research goals will be tailored to the particular needs of the NICHD laboratory, the expertise of the collaborator and NICHD, and any proprietary technology the collaborator and/or NICHD brings to the project. Under the present opportunity, the goals of the CRADA are anticipated to include, but not be limited to, the development of the following technology:

- Development of one or more software packages for analyzing patient data in cases of amenorrhea;
- Examination of possible automated processes for conducting differential diagnoses of conditions causing amenorrhea; and
- Development of improved tools for diagnosing conditions causing amenorrhea, to be used by clinicians in a clinical setting.

The software to be developed will be able to collect standardized data from patients with amenorrhea at the point of care. This system will be used to collect research data that will accurately characterize the clinical presentation of a broad range of disorders that may present with a chief complaint of amenorrhea. As this data is collected and analyzed the findings will be used to update the software. This iterative process will build an effective instrument that eventually can be used by caregivers at the point of patient contact to assist in the diagnosis and management of amenorrhea. After the system has been fully validated in a research setting this "working model" may be modified so as to collect basic screening data from women with amenorrhea in preparation for a visit to their health care provider. Thus, the development of a successful system will depend heavily on insight and experience on how to best meet the needs of the health care consumer as well as the health care provider.

A strategy should be developed to collect the patient data, link it to the pertinent published medical literature across disciplines, and provide a process for guided investigation and clinical decision making. Strategies should also be developed to employ the system for patient education, disease prevention, and health promotion.

The term of the CRADA(s) will be up to five (5) years, depending on the proposal(s). Applicants are encouraged to recommend in the written proposal alternative, additional applications and technologies to be developed.

#### Anticipated Party Contributions

The role of NICHD may include the following:

- (1) Plan research studies, interpret research results, and jointly publish the conclusions with the collaborator;
- (2) Provide collaborator with access to existing NICHD research data (both already collected and yet to be collected);
- (3) Provide staff, expertise, & materials for the development and testing of promising products; and
- (4) Provide work space and equipment for testing of any prototype systems developed.

The role of the successful collaborator will include the following:

- (1) Provide significant intellectual, scientific, and technical expertise in the development and manufacture of relevant products;
- (2) Plan research studies, interpret research results, and jointly publish the conclusions with NICHD;

(3) As necessary for the project, provide to NICHD any specialized or unusual equipment, access to necessary proprietary technology and/or data; and

(4) As necessary for the project, provide staff and funding in support of the research goals.

Other contributions may be necessary for particular proposals.

#### Selection Criteria

Proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following qualifications:

(1) Expertise:

A. Expertise in the research and development of high quality software utilizing artificial intelligence;

B. Experience in determining and meeting the needs of health care consumers; and

C. Demonstrated ability in the production and verification of software products.

(2) Reliability as a research partner:

A. Develops and produces products in a timely manner (for example, as demonstrated by a history of meeting benchmarks in licenses);

B. Indications of high levels of satisfaction by industry with the collaborator's products; and

C. Commitment to supporting the advancement of scientific research, as evidenced by a willingness to publish research results in a prompt manner; and

D. Willingness to be bound, to the extent applicable, by DHHS and PHS policies regarding:

(i) The rapid, public distribution of pure research tools,

(ii) The care and handling of animals, and

(iii) Human subjects research.

(3) Physical Resources:

A. An established headquarters, with office space and basic office equipment;

B. Access to the organization during business hours by telephone, facsimile, courier, U.S. Post, e-mail, the World-Wide-Web, and any evolving communication technologies; and

C. Sufficient financial and material resources to support, at a minimum, the anticipated activities of the CRADA.

Dated: May 31, 2001.

**Kathleen Sybert,**

*Chief, TTB/NCI/NIH.*

[FR Doc. 01-14365 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, June 7, 2001, 2:30 p.m. to June 7, 2001, 4 p.m., 7201 Wisconsin Avenue, Bethesda, MD, 20892 which was published in the **Federal Register** on May 24, 2001. 66 FR 28756.

The meeting scheduled for June 7, 2001 will now be held on June 20, 2001. The meeting is closed to the public.

Dated: May 31, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01-14359 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 2-3, 2001.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Governor's House Hotel, 17th & Rhode Island Avenue, NW., Washington, DC 20036.

*Contact Person:* Richard E. Weise, PhD., Scientific Review Administrator, National Institute of Mental Health, DEA, National Institutes of Health, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892-9606, 301-443-1340, rweise@mail.nih.gov.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 12, 2001.

*Time:* 8 am to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Houmam H. Araj, PhD., Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892-9608, 301-443-1340.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 31, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 01-14360 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* July 18, 2001.

*Time:* 3 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20892.

*Contact Person:* Aftab A. Ansari, PhD, National Institutes of Health, NIAMS, Natcher Building, 45 Center Drive, Room 5AS25N, Bethesda, MD 20892, 301-594-4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis,

Musculoskeletal and Skin Diseases Research,  
National Institutes of Health, HHS)

Dated: May 31, 2001.

**LaVernese Y. Stringfield,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. 01-14361 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the  
Federal Advisory Committee Act, as  
amended (5 U.S.C. appendix 2), notice  
is hereby given of the following  
meeting.

The meeting will be closed to the  
public in accordance with the  
provisions set forth in sections  
552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,  
as amended. The grant applications and  
the discussions could disclose  
confidential trade secrets or commercial  
property such as patentable material,  
and personal information concerning  
individuals associated with the grant  
applications, the disclosure of which  
would constitute a clearly unwarranted  
invasion of personal privacy.

*Name of Committee:* National Institute of  
Arthritis and Musculoskeletal and Skin  
Diseases Special Emphasis Panel.

*Date:* July 17-18, 2001.

*Time:* 8:30 am to 2:30 pm.

*Agenda:* To review and evaluate grant  
applications.

*Place:* Bethesda Marriott, 5151 Pooks Hill  
Road, Bethesda, MD 20892.

*Contact Person:* Aftab A. Ansari, PhD,  
National Institutes of Health, NIAMS,  
Natcher Building, 45 Center Drive, Room  
5AS25N, Bethesda, MD 20892, 301-594-  
4952.

(Catalogue of Federal Domestic Assistance  
Program Nos. 93.846, Arthritis,  
Musculoskeletal and Skin Diseases Research,  
National Institutes of Health, HHS)

Dated: May 31, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. 01-14362 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the  
Federal Advisory Committee Act, as  
amended (5 U.S.C. appendix 2), notice  
is hereby given of the following  
meetings.

The meetings will be closed to the  
public in accordance with the  
provisions set forth in sections  
552b(c)(4) and 552b(c)(6), Title 5 U.S.C.,  
as amended. The contract proposals and  
the discussions could disclose  
confidential trade secrets or commercial  
property such as patentable material,  
and personal information concerning  
individuals associated with the contract  
proposals, the disclosure of which  
would constitute a clearly unwarranted  
invasion of personal privacy.

*Name of Committee:* National Institute of  
Environmental Health Sciences Special  
Emphasis Panel RFA ES01-004—  
Mechanisms of Environmental Oxidative  
Stress and Dietary Modulation.

*Date:* June 27-29, 2001.

*Time:* 1 pm to 5 pm.

*Agenda:* To review and evaluate grant  
applications.

*Place:* Nat. Institute of Environmental  
Health Sciences, South Campus, Building  
101, Conference Room B, Research Triangle  
Park, NC 27709.

*Contact Person:* Brenda K. Weis, PhD,  
Scientific Review Administrator, Scientific  
Review Branch, Division of Extramural  
Research and Training, Nat. Institutes of  
Environmental Health Sciences, P.O. Box  
12233, MD/EC-30, Research Triangle Park,  
NC 27709, 919/541-4964.

*Name of Committee:* National Institute of  
Environmental Health Sciences Special  
Emphasis Panel RFP ES-01-05.

*Date:* June 29, 2001.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate contract  
proposals.

*Place:* Hawthorne Suites, 300 Meredith  
Drive, Durham, NC 27713.

*Contact Person:* Zoe E. Huang, MD,  
Scientific Review Administrator, Scientific  
Review Branch, Division of Extramural  
Research and Training, Nat. Institutes of  
Environmental Health Sciences, P.O. Box  
12233, MD/EC-30, Research Triangle Park,  
NC 27709, 919/541-4964.

(Catalogue of Federal Domestic Assistance  
Program Nos. 93.113, Biological Response to  
Environmental Health Hazards; 93.114,  
Applied Toxicological Research and Testing;  
93.115, Biometry and Risk Estimation—  
Health Risks from Environmental Exposures;  
93.142, NIEHS Hazardous Waste Worker  
Health and Safety Training; 93.143, NIEHS  
Superfund Hazardous Substances—Basic  
Research and Education; 93.894, Resources

and Manpower Development in the  
Environmental Health Sciences, National  
Institutes of Health, HHS)

Dated: May 31, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. 01-14364 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in  
the meeting of the National Heart, Lung,  
and Blood Advisory Council, June 14,  
2001, 8:30 AM to June 14, 2001, 2 PM,  
National Institutes of Health, Building  
31, C Wing, Conference Room 10, 9000  
Rockville Pike, Bethesda, MD, 20892  
which was published in the **Federal  
Register** on May 4, 2001, 66 FR 22589.

The National Heart, Lung, and Blood  
Advisory Council's open session start  
time has changed from 8:30 AM to 8  
AM. Date and location remain the same.  
The meeting is partially closed to the  
public.

Dated: May 31, 2001.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory  
Committee Policy.*

[FR Doc. 01-14363 Filed 6-6-01; 8:45 am]

**BILLING CODE 4140-01-M**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4456-N-16]

#### Privacy Act of 1974; Notice of a computer matching program

**AGENCY:** Office of the Chief Information  
Officer, HUD.

**ACTION:** Notice of a computer matching  
program between the Department of  
Housing and Urban Development (HUD)  
and the Department of Justice (DOJ).

**SUMMARY:** In accordance with the  
Privacy Act of 1974 (5 U.S.C. 552a), as  
amended by the Computer Matching  
and Privacy Protection Act of 1988, as  
amended, (Pub. L. 100-503), and the  
Office of Management and Budget  
(OMB) Guidelines on the Conduct of  
Matching Programs (54 FR 25818 (June  
19, 1989)), and OMB Bulletin 89-22,  
"Instructions on Reporting Computer  
Matching Programs to the Office of  
Management and Budget (OMB),

Congress and the Public," the Department of Housing and Urban Development (HUD) is issuing a public notice of its intent to conduct a recurring computer matching program with the Department of Justice (DOJ) to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with DOJ's debtor files. The CAIVRS data base now includes delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal Government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal Government. Before granting a loan, a lending agency and/or an authorized lending institution will be able to interrogate the CAIVRS debtor file which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulter and debtor files of the DOJ and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision of any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

**DATES:** *Effective Date:* Computer matching is expected to begin July 9, 2001 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

*Comments Due Date:* July 9, 2001.

**ADDRESSEES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:**

*From Recipient Agency Contact:* Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St., SW., Room P8001, Washington, DC 20410, telephone number (202) 708-2374. (This

is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

*From Source Agency Contact:* Diane J. Watson, Debt Collection Management, Department of Justice, 10th and Constitution Avenue, NW., Washington, DC 20530, telephone number (202) 514-5343. (This is not a toll-free number.)

*Reporting:* In accordance with Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89-22, "Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;" copies of this Notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget.

**Authority:** The matching program will be conducted under the authority of 28 U.S.C. 2301(e) (3611 of the Federal Debt Collection Procedures Act of 1990, Pub. L. 101-647), and Office of Management and Budget (OMB) Circulars A-129 (Managing Federal Credit Programs) and A-70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for Federal credit programs. OMB Circulars A-129 and A-70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

*Objectives To Be Met By the Matching Program:* By identifying those individuals or corporations against whom the DOJ has filed a judgment, the Federal Government can expand the prescreening search of their loan applicants to further avoid lending to applicants who are credit risks.

*Records To Be Matched:* HUD will utilize its system of records entitled HUD/DEPT-2, *Accounting Records*. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT-2, System of Records, receives its program

inputs from HUD/DEPT-28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT-32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD-1, Rehabilitation Loans-Delinquent/Default.

The DOJ will provide HUD with its debtor files contained in its system of records entitled, Debt Collection Management System, JUSTICE/JMD-006. HUD is maintaining DOJ's records only as a ministerial action on behalf of DOJ, not as part of HUD's HUD/DEPT-2 system of records. DOJ's data contain information on individuals or corporations who have defaulted on Federal judgments. The DOJ will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for DOJ's data.

*Notice Procedures:* HUD will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a Federal debt. HUD and DOJ will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the Federal Government.

*Categories of Records/Individuals Involved:* The debtor records include these data elements from HUD's systems of records, HUD/Dept-2: SSN, claim number, program code, and indication of indebtedness. Categories of records include: records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures, and Federal judgment liens.

Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans, and individuals or corporations against whom judgments have been filed by DOJ.

*Period of the Match:* Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary

determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: May 31, 2001.

**Gloria R. Parker,**

*Chief Information Officer.*

[FR Doc. 01-14403 Filed 6-6-01; 8:45 am]

BILLING CODE 4210-72-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of Amended Environmental Assessment for Proposed Amendment of Incidental Take Permit PRT-816732

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

The Fish and Wildlife Service (Service) announces the availability of amendments to Incidental Take Permit (ITP) PRT-816732, originally issued October 22, 1996. The originally issued, and currently active, ITP authorizes the take of bald eagles (*Haliaeetus leucocephalus*) in Osceola County, Florida. The proposed ITP modifications respond to the Permittee's request for clarification of specific conditions of the original ITP and address revised development plans submitted by the Permittee.

The Service also announces the availability of an amended EA and HCP for the incidental take amendment application. Copies of the draft EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (NEPA). The preliminary Finding of No Significant Impact (FONSI) is based on information contained in the draft EA and HCP. The final determination will be made no sooner than 60 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

The Service specifically requests information, views, and opinions from the public via this Notice on the federal action, including the identification of any other aspects of the human

environment not already identified in the Service's amended EA. Further, the Service is specifically soliciting information regarding the adequacy of the HCP as measured against the Service's ITP issuance criteria found in 50 CFR parts 13 and 17.

If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (see **ADDRESSES**). You may also comment via the internet to [david\\_dell@fws.gov](mailto:david_dell@fws.gov). Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed below (see **FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to either Service office listed below (see **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. We will not; however, consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**DATES:** Written comments on the proposed ITP amendments should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before August 6, 2001.

**ADDRESSES:** Persons wishing to review the amended EA or the EA originally prepared for the issuance of this ITP, may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. These documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, Post

Office Box 2676, Vero Beach, Florida 32961-2676.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Dell, Regional HCP Coordinator, (see **ADDRESSES** above), telephone: 404/679-7313, facsimile: 404/679-7081; or Mr. Mike Jennings, Fish and Wildlife Biologist, South Florida Ecosystem Office, Vero Beach, Florida (see **ADDRESSES** above), telephone: 561/562-3909.

**SUPPLEMENTARY INFORMATION:** On October 22, 1996, Mr. Nick Gross, the Permittee, was issued ITP PRT-816732 in response to the submission of an adequate Habitat Conservation Plan (HCP) and complete permit application pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (U.S.C. 1531 *et seq.*), as amended (Act). The current ITP authorizes the one-time taking of nesting bald eagles, through harassment, resulting from earth moving, land clearing, and human habitation of a residential community being developed by the Permittee. The ITP requires a number of measures to minimize the impacts of residential development on nesting bald eagles, including phased construction within a 250 foot buffer zone around the nest, limitations on vegetation removal within the 250 foot buffer zone, as well as various prohibited activities and building restrictions within the buffer zone. The ITP also requires mitigation in the form of payment of \$25,000 to a bald eagle conservation fund upon a determination that the nesting eagles abandoned the nest site.

Bald eagles successfully nested during the 1996-1997, 1997-1998, and 1998-1999 nesting seasons due to the implementation of minimization measures prescribed within the ITP. However, the Permittee's 1999-2000 monitoring report indicated that bald eagles failed to nest, although adult birds were documented regularly at the nest site and immediate vicinity. In the 2000-2001 nesting season, bald eagles appeared at the project area, but there was no nesting activity. As a result of this nesting failure, the Service requested, and the Permittee subsequently fulfilled, the mitigation requirements stipulated in the ITP.

The Permittee has fully implemented the HCP and is in compliance with the terms and conditions of the ITP, including the funding of off-site mitigation measures. Following the determination of nest abandonment, the Permittee provided the Service with a written request for modifications to the ITP that would alter allowable construction timing and revise development plans. The requested

revision of timing considerations would allow construction during the nesting season after monitoring confirms that nesting attempts by any eagles present had been abandoned. Current ITP conditions require monitoring and restrictions on construction until the end of the nesting season. This revision will not result in additional take of bald eagles.

Revised development plans, if implemented, will result in a decrease in the existing buffer zone surrounding the nest site. The Service proposes to modify the current ITP allowing for the construction of five additional single-family homes within the 250-foot buffer zone surrounding the bald eagle nest site. Under the current ITP, the five lots are encompassed within the 250-foot buffer zone, and represent natural areas where construction is prohibited. The proposed ITP modification will result in a reduction in the "no-build" buffer to a 30-foot radius around the nest tree, however, revised construction timing restrictions within this reduced buffer and other protective measures currently required within the current buffer zone will remain in effect. Although this revision may cause take in the form of harassment of adult eagles, the Service believes take of active nests to be highly unlikely because the eagles have not nested here in the past two seasons.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the draft EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: May 25, 2001.

**Sam D. Hamilton,**  
Regional Director.

[FR Doc. 01-14300 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### Availability of an Environmental Action Statement and Receipt of an Application for a Permit To Enhance the Survival of the Oregon Chub in Lane County, OR Under a Safe Harbor Agreement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that Robert Russell (Applicant) has applied to the Fish and Wildlife Service (we, the Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for the Oregon Chub (*Oregonichthys crameri*) in Lane County, Oregon. This permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service. The proposed permit and Agreement would become effective upon initialization of the Agreement and remain in effect for 30 years. The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement, which also is available for public review.

We announce the opening of a 30-day comment period to receive comments from the public on the Applicant's enhancement of survival permit application, the accompanying proposed Agreement, and Environmental Action Statement.

The Agreement fully describes the proposed project, management actions, and the conservation benefits that will be gained for Oregon chub. The management actions and conservation benefits are also described in the Background section below.

**DATES:** Written comments must be received by July 9, 2001.

**ADDRESSES:** Comments should be addressed to the Manager, Fish and Wildlife Service, Oregon Fish and Wildlife Office, fax number (503) 231-6195 (see Public Review and Comment section below).

**FOR FURTHER INFORMATION CONTACT:** Amy Horstman, Fish and Wildlife Service, Oregon Fish and Wildlife Office, telephone (503) 231-6179.

**SUPPLEMENTARY INFORMATION:**

### Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners that they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with the Applicant to develop the proposed Agreement for the conservation of Oregon chub within his 800 square meter (0.2 acre) artificial pond in Lane County, Oregon. The area is currently not occupied by Oregon chub or any other Federal or State listed species. Under the proposed Agreement, the Applicant will: (1) Allow translocation of Oregon chub to the pond, (2) allow the Service and Oregon Department of Fish and Wildlife access to the pond for translocation and habitat and chub population monitoring, (3) provide the Service with written notice of intent to modify the pond or introduce competing fish species, (4) work cooperatively with the Service on other issues necessary to further the purposes of the Agreement.

Threats to the Oregon chub include: dam construction, channelization, diking, wetland fill, and loss of riparian vegetation which have changed flooding, streamflow, and temperature patterns of the watershed and subsequent loss of backwater habitats used by Oregon chub (Markle *et al.* 1991). Degradation of habitat has also occurred, primarily due to sedimentation from construction activities, logging, alterations of water flow, and other causes. Introductions of exotic game fish (e.g., bass, crappie, mosquito fish) may have contributed to the decline of existing Oregon chub populations and may reduce the potential for Oregon chub to recolonize suitable habitats through increased competition for resources, predation, and introduction of parasites and disease (Markle and Pearsons 1990). The proximity of many populations to rail, highway, and power transmission corridors, and state park campgrounds poses the threat of chemical spills, runoff or spill of agricultural or right-of-

way maintenance chemicals, and overflow from campground toilets. This Agreement provides a net conservation benefit to Oregon chub by creating a protected refugia for this segment of the Oregon chub population and thereby reducing risks of complete loss of the donor population and thus loss of any unique genetic material. The Agreement is expected to contribute to recovery of Oregon chub by reducing threats and expanding Oregon chub populations. Recovery of the species would be further enhanced by increasing the reproductive viability of the populations.

Under the Agreement, consistent with the Service's Safe Harbor Policy, published in the **Federal Register** on June 17, 1999 (64 FR 32717), the Service would issue a permit to the Applicant authorizing incidental take of Oregon chub as a result of activities outside of the 15-meter (50-foot) buffer zone around the perimeter of the pond. These activities include: diversion of water for irrigation or other purposes, grazing of livestock upslope of the pond, stocking of fish or amphibian species, logging trees, removal of vegetation surrounding the pond area, use of herbicide or pesticide, and any earthmoving activities upslope of the pond. We expect that the maximum level of incidental take authorized under the proposed Agreement will never be realized.

We are providing this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate this permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If, upon completion of the 30-day comment period, we determine that the requirements are met, we will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of Oregon chub incidental to otherwise lawful activities in accordance with the terms of the Agreement.

#### Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application, the Environmental Action Statement, or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act.

Dated: May 24, 2001.

**Rowan W. Gould,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 01-14323 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### **Availability of an Environmental Action Statement and Receipt of an Application for a Permit To Enhance the Survival of the Hawaiian Duck or Koloa and Endangered Hawaiian Goose or Nene through a Safe Harbor Agreement for Umikoa Ranch, HI**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** This notice advises the public that Umikoa Ranch, Limited (Ranch) has applied to the Fish and Wildlife Service (we, the Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) for Hawaiian Duck or Koloa (*Anas wyvilliana*) and Endangered Hawaiian Goose or Nene (*Branta sandvicensis*). The permit application includes a Safe Harbor Agreement (Agreement) between the Ranch, the Service, and the Hawaii Department of Land and Natural Resources. The proposed permit and Agreement would become effective upon initialization of the Agreement and remain in effect for 20 years. The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement, which also is available for public review.

We announce the opening of a 30-day comment period to receive comments from the public on the Applicant's enhancement of survival permit

application, the accompanying proposed Agreement, and Environmental Action Statement. For further information and instruction on the reviewing and commenting process, see Public Review and Comment section below.

**DATES:** Written comments must be received by July 9, 2001.

**ADDRESSES:** Comments should be addressed to Mr. Paul Henson, Field Supervisor, U.S. Fish and Wildlife Service, PO Box 50088, Honolulu, Hawaii 96850; facsimile (808) 541-3470. (See Public Review and Comment section below.)

**FOR FURTHER INFORMATION CONTACT:** Ms. Gina Shultz at the above address or telephone 808-541-3441.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c).

We have worked with the Ranch and the Hawaii Department of Land and Natural Resources to develop a Safe Harbor Agreement for the creation and enhancement of habitat for the endangered Hawaiian duck or koloa and Hawaiian goose or nene on Umikoa Ranch, Hawaii. Under this Agreement, the Ranch will: (1) Construct and maintain wetland and associated upland habitat for nene and koloa; (2) maintain fences that exclude cattle from newly created wetland and associated upland habitats; (3) allow for controlled grazing to prevent encroachment of kikuyu grass and for maintenance of open, short grass habitat for nene; (4) prevent the establishment of problematic alien invasive plant species; (5) implement a program to control predators in and around newly created habitats where koloa and nene are likely to occur; (6) prohibit hunting in areas within the upper portion of the Ranch managed for koloa and nene; and (7) prevent the

introduction and establishment of non-native waterfowl.

We anticipate that this Agreement will result in the following benefits: (1) Establishment of a self-sustaining population or expansion of core populations for nene and koloa on the island of Hawaii; (2) reduced likelihood of hybridization of koloa with feral mallards and preservation of genetic integrity of koloa on the island of Hawaii; (3) increased genetic diversity of nene; (4) safe nesting sites that will support reproduction and an increased number of koloa and nene in the wild (anticipated five pairs of koloa and ten pairs of nene); (5) greater understanding of the effectiveness of management techniques for koloa and nene; (6) and additional sources of koloa and nene for future management activities.

Consistent with Safe Harbor policy, we propose to issue a permit to the Ranch authorizing incidental take of koloa and nene which occur on the enrolled lands, and their progeny, as a result of lawful activities at the Ranch, so long as baseline conditions are maintained and terms of the Agreement are implemented. These activities include unintentional incidental take of koloa and nene from: (1) Koa forestry; (2) eco-tourism; (3) cultivation of agricultural crops; and (4) cattle grazing. We expect that the maximum level of incidental take authorized under the Agreement will never be realized. The Ranch has no plans to change land uses. Further, we anticipate that any koloa or nene taken will not be injured or harmed, but will be relocated, with permission from landowners, to other suitable lands. We expect that the creation and enhancement of wetland and associated upland habitat will result in the establishment of a self-sustaining permanent population or expansion of core populations for nene and koloa on the island of Hawaii. Therefore, the cumulative impact of the Agreement and the activities it covers, which are facilitated by the allowable incidental take, will provide a net conservation benefit to koloa and nene.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. If, upon completion of the 30-day comment period, we determine that the requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section

10(a)(1)(A) of the Act to Umikoa Ranch for take of koloa and nene incidental to otherwise lawful activities in accordance with the terms of the Agreement.

#### Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above.

If you wish to comment on the permit application, Environmental Action Statement, or the Agreement, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Comments and materials received, including names and addresses of respondents, will be available for public review, by appointment, during normal business hours at the address in the **ADDRESSES** section above and will become part of the public record, pursuant to section 10(c) of the Act.

Dated: May 23, 2001.

**Anne Badgley,**

*Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 01-14324 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-55-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### North American Wetlands Conservation Act: Request for Small Grants Proposals for Year 2002

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The purpose of this notice is to advise the public that we, the U.S. Fish and Wildlife Service (Service) and the North American Wetlands Conservation Council (Council), are currently entertaining proposals that request match funding for wetland and wetland-associated upland conservation projects under the Small Grants program. Projects must meet the purposes of the North American Wetlands Conservation Act of 1989, as amended. We will give funding priority to projects from new grant applicants with new partners, where the project ensures long-term conservation benefits. However, previous Act grantees are eligible to receive funding and can compete successfully on the basis of strong project resource values.

**DATES:** Proposals must be postmarked no later than Friday, November 30, 2001.

**ADDRESSES:** Address proposals to: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, Virginia 22203, Attn: Small Grants Coordinator.

**FOR FURTHER INFORMATION CONTACT:** Dr. Keith A. Morehouse, Small Grants Coordinator, or Office Secretary, Division of Bird Habitat Conservation, 703-358-1784; facsimile 703-358-2282.

#### SUPPLEMENTARY INFORMATION:

The purpose of the 1989 North American Wetlands Conservation Act (NAWCA), as amended (16 U.S.C. 4401 *et seq.*) is, through partnerships, to promote long-term conservation of North American wetland ecosystems and the waterfowl and other migratory birds, fish and wildlife that depend upon such habitats. Principal conservation actions supported by NAWCA are acquisition, enhancement and restoration of wetlands and wetlands-associated uplands habitat.

Initiated in 1996, the underlying objective of the Small Grants program is to promote long-term wetlands conservation activities through encouraging participation by new grantees and partners who may not otherwise be able to compete in the regular grants program. We also hope that successful participants in the Small Grants program will be encouraged to participate in the NAWCA-based Standard Grants program. Over the first six years of the program, about 472 proposals requesting a total of approximately \$16.2 million competed for funding. Ultimately, 122 projects were funded over this period for about \$4.7 million. For 2002, with the approval of the Migratory Bird Conservation Commission, we have made the Small Grants program operational at a base level of \$1.0 million. Between \$1.0 and \$2.0 million in Small Grants projects may be funded. However, ultimately, the level of Small Grant funding depends upon the quality of the pool of grant proposals.

To be considered for funding in the 2002 cycle, proposals must have a grant request no greater than \$50,000. We will accept all wetland conservation proposals that meet the requirements of the Act. However, considering appropriate proposal resource values, we will give funding priority to projects from new grant applicants (individuals or organizations who have never received a NAWCA grant) with new partners, where the project ensures long-term conservation benefits. This

priority system does not preclude former NAWCA grant recipients from receiving Small Grants funding; ultimately, project resource value is the critical factor in deciding which projects receive funding. Also, projects are likely to receive a greater level of attention if they are part of a broader related or unrelated effort to bring or restore wetland or wetland-associated upland conservation values to a particular area or region.

In addition, proposals must represent on-the-ground projects, and any overhead in the project budget must constitute 10 percent or less of the grant amount. The anticipated magnitude of wetlands and wildlife resources benefits that will result from project execution is an important factor in proposal evaluation, and there should be a reasonable balance between acreages of wetlands and wetland-associated uplands. Mitigation-related projects may be precluded from consideration, depending upon the nature of the mitigation application.

Please keep in mind that NAWCA and matching funds may be applied only to wetlands acquisition, creation, enhancement, and/or restoration; they may not be applied to signage, displays, trails or other educational features, materials and equipment, even though the goal of the project may ultimately be to support wetland conservation education curricula. Projects oriented toward education are not ordinarily eligible for NAWCA funding because education is not a primary purpose of the Act. However, useful project outcomes can include educational benefits resulting from conservation actions. Research is also not a primary purpose of the Act, and research proposals are not considered for funding.

Even though we require less total application information for Small Grants than we do for the Standard Grants program, Small Grant proposals must have clear explanations and meet the basic purposes given above and the 1:1 or greater non-Federal matching requirements of the NAWCA. Small Grants projects must also be consistent with Council-established guidelines, objectives and policies. All non-Federal matching funds and proposed expenditures of grant funds must be consistent with Appendix A of the Small Grants instructions, "Eligibility Requirements for Match of NAWCA Grant and Non-Federal Funds." Applicants must submit a completed Standard Form 424, Application For Federal Assistance. Hard copies of Small Grant instructions (booklets) are no longer provided, except under

special circumstances. However, the NAWCA Program website, [birdhabitat.fws.gov](http://birdhabitat.fws.gov), contains instructions for completing and submitting a Small Grant application, as well as forms and instructions for the Standard Form 424.

Small Grant proposals may be submitted prior to the due date but must be postmarked no later than Friday, November 30, 2001. Address submitted proposals as follows: Division of Bird Habitat Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 110, Arlington, VA 22203, Attn: Small Grants Coordinator.

Applicants must submit *complete* grant request packages to the Division of Bird Habitat Conservation (DBHC), including *all* of the documentation of partners (partner letters) with funding pledge amounts. Information on funding in partner letters, i.e., amounts and description regarding use, must correspond with budget amounts in the budget table and any figures provided in the narrative.

With the volume of proposals received, we are not usually able to contact proposal sources to verify and/or request supplemental data and/or materials. Thus, those proposals lacking required information or containing conflicting information are subject to being declared ineligible and not further considered for funding.

For more information, call the DBHC office secretary at 703-358-1784, facsimile 703-358-2282, or send E-mail to [R9ARW\\_DBHC@FWS.GOV](mailto:R9ARW_DBHC@FWS.GOV). Small Grant application instructions may be available by E-mail as a WordPerfect© file, upon request.

In conclusion, we require that, upon arrival in the DBHC, proposal packages must be: complete with regard to the information requested, presented in the format requested, and be presented according to the established deadline.

The Service has submitted information collection requirements to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995, Public Law 104-13. On May 26, 1999, OMB gave its approval for this information collection and confirmed the approval number as 1018-0100. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection solicited: is necessary to gain a benefit in the form of a grant, as determined by the North American Wetlands Conservation Council and the Migratory Bird Conservation Commission; is necessary to determine the eligibility

and relative value of wetland projects; results in an approximate paperwork burden of 80 hours per application; and does not carry a premise of confidentiality. The information collections in this program will not be part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: May 22, 2001.

**Thomas O. Melius,**

*Assistant Director—Migratory Birds and State Programs, U.S. Fish and Wildlife Service.*

[FR Doc. 01-14327 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-55-P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Off-Track Wagering Compact between the Choctaw Nation and the State of Oklahoma, which was executed on March 28, 2001.

**DATES:** This action is effective June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-4066.

Dated: May 25, 2001.

**James H. McDivitt,**

*Deputy Assistant Secretary—Indian Affairs (Management).*

[FR Doc. 01-14308 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-02-M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Off-Track Wagering Compact between the Kaw Nation and the State of Oklahoma, which was executed on March 28, 2001.

**DATES:** This action is effective June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240. (202) 219-4066.

Dated: May 25, 2001.

**James H. McDivitt,**  
*Deputy Assistant Secretary—Indian Affairs (Management).*  
[FR Doc. 01-14307 Filed 6-6-01; 8:45 am]  
**BILLING CODE 4310-02-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100-497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Deputy Assistant Secretary—Indian Affairs (Management), Department of the Interior, through his delegated authority, has approved the Off-Track Wagering Compact between the Seminole Nation and the State of Oklahoma, which was executed on March 28, 2001.

**DATES:** This action is effective June 7, 2001.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-4066.

Dated: May 25, 2001.

**James H. McDivitt,**  
*Deputy Assistant Secretary—Indian Affairs (Management).*

[FR Doc. 01-14306 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-02-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CO-930; COC-012292]

#### Public Land Order No. 7487; Partial Revocation of Public Land Order No. 1742; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes Public Land Order No. 1742 insofar as it affects approximately 2 acres of National Forest System lands withdrawn for a roadside zone.

**EFFECTIVE DATE:** July 9, 2001.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7093, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1742, which withdrew National Forest System lands for a roadside zone along Colorado Highway 119, Peak-to-Peak Highway, is hereby revoked insofar as it affects the following described lands:

#### Sixth Principal Meridian

Roosevelt National Forest

T. 1 S., R. 73 W.,

A strip of land 200 feet north of the centerline of Colorado Highway 119 as it runs through the NE $\frac{1}{4}$  of section 24 crossing lots 8, 9, 25 and 32.

The areas described aggregate approximately 2 acres in Boulder County.

2. At 9 a.m. on July 9, 2001, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no

rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 21, 2001.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 01-14371 Filed 6-6-01; 8:45 am]

**BILLING CODE 3410-11-P**

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

#### Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of extension of a currently approved information collection (OMB Control Number 1010-0051).

**SUMMARY:** To comply with the Paperwork Reduction Act of 1995 (PRA), we are submitting to OMB for review and approval an information collection request (ICR), titled "30 CFR 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security." We are also soliciting comments from the public on this ICR. **DATES:** Submit written comments by July 9, 2001.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010-0051), 725 17th Street, NW., Washington, DC 20503. Mail or hand carry a copy of your 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 1010-0051" 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 at no cost a copy of our submission to OMB, which includes the regulations that require this information to be collected.

**SUPPLEMENTARY INFORMATION:**  
*Title:* 30 CFR 250, Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security.

*OMB Control Number:* 1010-0051.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary (Secretary) of the Department of the Interior (DOI) the responsibility to preserve, protect, and develop oil and gas resources in the OCS. This must be in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy-resources development with protection of the human, marine, and coastal environment; ensure the public a fair

and equitable return on OCS resources; and preserve and maintain free enterprise competition. The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701, *et seq.*) at section 1712(b)(2) prescribes that an operator will "develop and comply with such minimum site security measures as the Secretary deems appropriate, to protect oil or gas produced or stored on a lease site or on the Outer Continental Shelf from theft." These authorities and responsibilities are among those delegated to MMS under which we issue regulations governing oil and gas and sulphur operations in the OCS. This information collection request addresses the regulations at 30 CFR part 250, subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security, and the associated supplementary notices to lessees and operators intended to provide clarification, description, or explanation of these regulations.

MMS uses the information collected under subpart L to ensure that the volumes of hydrocarbons produced are measured accurately, and royalties are paid on the proper volumes. Specifically, MMS needs the information to:

- Determine if measurement equipment is properly installed, provides accurate measurement of production on which royalty is due, and is operating properly;
- Obtain rates of production data in allocating the volumes of production measured at royalty sales meters, which can be examined during field inspections;

- Ascertain if all removals of oil and condensate from the lease are reported;
- Determine the amount of oil that was shipped when measurements are taken by gauging the tanks rather than being measured by a meter;
- Ensure that the sales location is secure and production cannot be removed without the volumes being recorded; and
- Review proving reports to verify that data on run tickets are calculated and reported accurately.

Responses are mandatory. No questions of a "sensitive" nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

*Frequency:* The frequency varies by section, but is primarily monthly or "on occasion."

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas or sulphur lessees.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* The following chart details the components of the estimated hour burden for the information collection requirements in subpart L—6,548 total burden hours. In estimating the burden, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 subpart L	Reporting or recordkeeping requirement	Requirement hour burden
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**Reporting Requirements**

1202(a)(1), (b)(1) .....	Submit liquid hydrocarbon measurement procedures application and/or changes.	8 hours.
1202(a)(4) .....	Copy & send pipeline (retrograde) condensate volumes upon request.	¾ hour.
1202(c)(4)* .....	Copy & send all liquid hydrocarbon run tickets monthly .....	1 minute.
1202(d)(4) .....	Request approval for proving on a schedule other than monthly .....	1 hour.
1202(d)(5)* .....	Copy & submit liquid hydrocarbon royalty meter proving reports monthly & request waiver as needed.	1 minute.
1202(f)(2)* .....	Copy & submit mechanical-displacement prover & tank prover calibration reports.	10 minutes.
1202(l)(2)* .....	Copy & submit royalty tank calibration charts before using for royalty measurement.	10 minutes.
1202(l)(3)* .....	Copy & submit inventory tank calibration charts upon request .....	¼ hour.
1203(b)(1) .....	Submit gas measurement procedures application and/or changes .....	8 hours.
1203(b)(6), (8), (9)* .....	Copy & submit gas quality and volume statements upon request (80% of these will be routine; 20% will take longer).	80% @ 5 mins. 20% @ 30 mins.
1203(c)(4)* .....	Copy & submit gas meter calibration reports upon request .....	5 minutes.
1203(e)(1)* .....	Copy & submit gas processing plant records upon request .....	½ hour.
1203(f)(5) .....	Copy & submit measuring records of gas lost or used on lease upon request.	5 minutes.
1204(a)(1) .....	Submit commingling application and/or changes .....	8 hours.
1204(a)(2) .....	Provide state production volumetric and/or fractional analysis data upon request.	1 hour.
1205(a)(4) .....	Report security problems (telephone) .....	¼ hour.

Citation 30 CFR 250 subpart L	Reporting or recordkeeping requirement	Requirement hour burden
<b>Recordkeeping Requirements</b>		
1202(c)(1), (2) .....	Record observed data, correction factors & net standard volume on royalty meter and tank run tickets.	Respondents record these items as part of normal business records & practices to verify accuracy of production measured for sale purposes.
1202(e) .....	Record master meter calibration runs .....	
1202(h)(1), (2), (3), (4) .....	Record mechanical-displacement prover, master meter, or tank prover proof runs.	
1202(i)(1)(iv), (2)(iii) .....	Record liquid hydrocarbon royalty meter malfunction and repair or adjustment on proving report; record unregistered production on run ticket.	
1202(j) .....	List Cpl and Ctl factors on run tickets .....	
1202(e)(6) .....	Retain master meter calibration reports for 2 years .....	1 minute.
1202(k)(5) .....	Retain liquid hydrocarbon allocation meter proving reports for 2 years	1 minute.
1202(l)(3) .....	Retain liquid hydrocarbon inventory tank calibration charts for as long as tanks are in use.	5 minutes.
1203(c)(4) .....	Retain calibration reports for 2 years .....	1 minute.
1203(f)(4) .....	Document & retain measurement records on gas lost or used on lease for 2 years.	1 minute.
1204(b)(3) .....	Retain well test data for 2 years .....	2 minutes.
1205(a)(2) .....	Post signs at royalty or inventory tank used in royalty determination process.	1 hour.
1205(b)(3), (4) .....	Retain seal number lists for 2 years .....	2 minutes.

\* Respondents gather this information as part of their normal business practices. MMS only requires copies of readily available documents. This is no burden for testing, meter reading, document preparation, etc.

#### *Estimated Annual Reporting and Recordkeeping "Non-Hour Cost"*

*Burden:* We have identified no "non-hour" costs burdens.

*Comments:* Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) 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.

To comply with the public consultation process, on February 20, 2001, we published a **Federal Register** notice (66 FR 10900) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 displays the OMB control number, specifies that the public may comment at anytime on the collection of information required in the 30 CFR part 250 regulations and forms, and provides the address to which they should send comments. We have received no comments in response to these efforts. We also consulted with

several respondents and adjusted some of the information collection burdens as a result of those consultations.

If you wish to comment in response to this notice, send your comments directly to the offices listed under the **ADDRESSES** section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by July 9, 2001. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208-7744.

Dated: April 26, 2001.

**John V. Mirabella,**

*Acting Chief, Engineering and Operations Division.*

[FR Doc. 01-14295 Filed 6-6-01; 8:45 am]

**BILLING CODE 4310-MR-P**

#### **INTERNATIONAL TRADE COMMISSION**

[Investigation No. 337-TA-395]

#### **In the Matter of Certain Eprom, Eeprom, Flash Memory, and Flash Microcontroller Semiconductor Devices, and Products Containing Same; Notice of Final Determination of no Violation of Section 337 of the Tariff Act of 1930 as to Macronix Respondents on Remand From the U.S. Court of Appeals for the Federal Circuit**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined that there is no violation by Macronix International Co., Ltd. and Macronix America, Inc. of section 337 of the Tariff Act of 1930 in the above-captioned investigation.

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

Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3152.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on March 18, 1997, based upon a complaint filed by Atmel Corporation alleging that Sanyo Electric Co., Ltd. ("Sanyo"), Winbond Electronics Corporation of Taiwan and Winbond Electronics North America Corporation of California (collectively "Winbond"),

and Macronix International Co., Ltd. and Macronix America, Inc. (collectively "Macronix") had violated section 337 of the Tariff Act of 1930 in the sale for importation, the importation, and the sale within the United States after importation of certain erasable programmable read only memory ("EPROM"), electrically erasable programmable read only memory ("EEPROM"), flash memory, and flash microcontroller semiconductor devices, by reason of infringement of one or more claims of U.S. Letters Patent 4,511,811 ("the '811 patent"), U.S. Letters Patent 4,673,829 ("the '829 patent"), and U.S. Letters Patent 4,451,903 ("the '903 patent") assigned to Atmel. 62 FR 13706 (March 21, 1997). Silicon Storage Technology, Inc. ("SST") was permitted to intervene in the investigation.

On October 16, 2000, the Commission determined that there is a violation of section 337 by Sanyo and Winbond with respect to the '903 patent, but no violation with respect to the '811 and '829 patents, and issued a limited exclusion order prohibiting the importation of EPROMs, EEPROMs, flash memories, and flash microcontroller semiconductor devices, and circuit boards containing such devices, that infringe claims 1 or 9 of the '903 patent, manufactured by or on behalf of Sanyo and Winbond. In reaching its determination, the Commission rejected respondents' arguments that the '903 patent is unenforceable due to waiver and implied license, or to incorrect inventorship, or to inequitable conduct by Atmel in obtaining the certificate of correction from the PTO.

Winbond appealed these findings as well as the Commission's claim construction and infringement findings to the U.S. Court of Appeals for the Federal Circuit. *Winbond Electronics Corp. v. U.S. International Trade Commission*, Case Nos. 01-1031-1032-1034 (the Winbond appeal). Atmel appealed the Commission's finding that respondent Macronix did not infringe the asserted claims of the '903 patent and the Commission's findings of no violation with respect to the '811 and '829 patents. Atmel also appealed the temporal scope of the Commission's order finding that Atmel waived its attorney client privilege and work product protections. *Atmel Corp. v. U.S. International Trade Commission*, Case No. 01-1128 (the Atmel appeal).

On December 21, 2000, the Court ordered an expedited briefing and oral argument schedule for the Winbond appeal and the Atmel appeal. On December 28, 2000, the Court,

responding to a motion for clarification filed by Atmel, ordered that the appeals on the '811 and '829 are not expedited. Oral arguments for both the Winbond appeal and the remaining portions of the Atmel appeal were held at the Federal Circuit on January 16, 2001.

In an order issued on January 30, 2001, the Federal Circuit upheld the following determinations of the Commission: (1) That respondents have not shown that the '903 patent is unenforceable due to inequitable conduct; (2) that respondents have not shown that the '903 patent is unenforceable due to improper joinder in the inventorship of the '903 patent; (3) that respondents have not shown that the '903 patent is unenforceable due to waiver and implied license; (4) that Atmel waived its attorney-client privilege and work product protections dating back to January 1997.

In the Atmel appeal, the Court disagreed with some of the Commission's claim constructions, and vacated the Commission's finding that Macronix did not infringe the asserted claims of the '903 patent. The Court remanded the matter to the Commission to determine whether Macronix infringes under the claim construction found by the Court to be correct. Specifically, the Court stated that on remand that—

The Commission must make findings to determine whether the accused Macronix devices have the same or equivalent structures to: (1) A high voltage detection circuit and a decoder for the "access means"; and (2) an output buffer and output pins for the "output means."

2001 WL 80412 at \*9; slip op. at 18-19.

On March 29, 2001, the Commission ordered Atmel, Macronix, and the Commission investigative attorney to brief the issues on remand from the Federal Circuit. The parties filed initial briefs on April 4, 2001, and reply briefs on April 11, 2001.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and the mandate from the Federal Circuit issued March 23, 2001, remanding this matter to the Commission for further findings on whether the Macronix devices infringe claims 1 or 9 of the '903 patent under the Federal Circuit's claim construction.

Copies of the Commission Order, the Commission Opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at <http://dockets.usitc.gov/eol/public>.

Issued: June 1, 2001.

By order of the Commission.

**Donna R. Koehnke,**

Secretary.

[FR Doc. 01-14302 Filed 6-6-01; 8:45 am]

BILLING CODE 7020-02-P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### Rick Joe Nelson, M.D.; Revocation of Registration

On April 6, 2000, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OTSC) by certified mail to Rick Joe Nelson, M.D., notifying him of a preliminary finding that, pursuant to evidence set forth therein, he was responsible for the diversion of large quantities of controlled substances into other than legitimate medical channels, and additionally no longer possessed authority to either handle controlled substances or to practice medicine in Oklahoma, the State in which he held a DEA registration. Based on these preliminary findings, and pursuant to 21 U.S.C. 824(d) and 28 CFR 0.100 and 0.104, the OTSC suspended Dr. Nelson's DEA Certificate of Registration, effective immediately, with such suspension to remain in effect until a final determination in these proceedings is reached. The OTSC informed Dr. Nelson of an opportunity to request a hearing to show cause as to why the DEA should not revoke his DEA Certificate of Registration, BN1075224, and deny any pending applications for renewal or modification of such registration, for reason that such registration is inconsistent with the public interest, as determined by 21 U.S.C. 823(f). The OTSC also notified Dr. Nelson that, should no request for hearing be filed

within 30 days, his right to a hearing would be considered waived.

On April 6, 2001, a copy of the OTSC was personally served by two DEA Diversion Investigators upon Dr. Nelson's attorney. No request for a hearing or any other response was received by DEA from Dr. Nelson or anyone purporting to represent him in this matter, however. Therefore, the Administrator of the DEA, finding that (1) thirty days have passed since receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes Dr. Nelson is deemed to have waived his right to a hearing. After considering relevant material from the investigative file in this matter, the Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46 (1999).

The Administrator finds that based on an investigation by the Oklahoma and State Board of Medical Licensure and Supervisor, by use of a pharmacy internet web site, Dr. Nelson issued prescriptions for controlled substances without personally seeing or physically examining patients. During the single week of October 25, 2000, to November 2, 2000, Dr. Nelson authorized 1,684 prescriptions, of which 1,651 were for controlled substances. These prescriptions were not issued in the usual course of medical practice, in violation of 21 CFR 1306.04.

On December 14, 2000, Dr. Nelson agreed with the Oklahoma State Board of License and Supervision (Board) to refrain from issuance of further prescriptions to internet customers. Despite this agreement, at least eight refills and new prescriptions for controlled substances attributed to Dr. Nelson continued to be filled. The Board also learned that Dr. Nelson had prescribed drugs for three separate internet web sites.

On February 12, 2001, the Oklahoma Bureau of Narcotics and Dangerous Drug Control (Bureau) suspended Dr. Nelson's State narcotic registration, in part on the grounds that his registered address was in actuality a postal mail box facility, not a place of professional practice. The Bureau also learned that Dr. Nelson had provided a false social security number and date of birth in the application that he made with the Bureau.

On March 1, 2001, the Oklahoma State Board of Medical License and Supervisions issued an Order of Emergency Suspension suspending Dr. Nelson's medical license, in part based on a finding that he could not practice medicine with a reasonable degree of safety, competency, and skill sufficient

to protect the public health, safety, and welfare.

On the basis of this evidence, by the OTSC dated April 6, 2001, the Administrator of the DEA made the preliminary findings that Dr. Nelson was responsible for the diversion of large quantities of controlled substances into other than legitimate channels, and further that Dr. Nelson's violation of the December 14, 2000, agreement with the Board demonstrated that Dr. Nelson will continue to assist in the diversion of controlled substances. Therefore, pursuant to 21 U.S.C. 824(d), the Administrator of the DEA issued an immediate suspension of Dr. Nelson's DEA Certificate of Registration.

While the above-cited evidence provides ample grounds for an immediate suspension pursuant to section 824(d), these grounds also provide the basis for the revocation of Dr. Nelson's DEA Certificate of Registration. There is no evidence in the investigative file that Dr. Nelson's medical license has been reinstated since the March 1, 2001, Emergency Suspension by the Board. Therefore, the Administrator finds that Dr. Nelson is not currently authorized to practice medicine in the State of Oklahoma. Additionally, since there is no evidence that the suspension of Dr. Nelson's State narcotics registration has been lifted, the Administrator finds that Dr. Nelson also is not authorized to handle controlled substances in that State.

The DEA does not have the statutory authority pursuant to the Controlled Substances Act to issue or to maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld in prior DEA cases. See Frank R. Pennington, M.D., 66 FR 15,762 (DEA 2001); Romeo J. Perez, M.D., 62 FR 16,193 (DEA 1997); Demetris A. Green, M.D., 61 FR 60,728 (DEA 1996); Dominick A. Ricci, M.D., 58 FR 51,104 (DEA 1993). Here it is clear that Dr. Nelson is not currently authorized to handle controlled substances in the State of Oklahoma. As a result, he is not entitled to a DEA registration in that State.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BN1075224, previously issued to Rick Joe Nelson, M.D., be, and it hereby is, revoked. This order is effective July 6, 2001.

Dated: May 31, 2001.

**Donnie R. Marshall,**  
Administrator.

[FR Doc. 01-14292 Filed 6-6-01; 8:45 am]

BILLING CODE 4410-09-M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### Agency Information Collection Activities: Comments Request

**ACTION:** Notice of information collection under review; Employment eligibility verification

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The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until August 6, 2001.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Employment Eligibility Verification.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I-9. Programs Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form was developed to facilitate compliance with Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, which prohibits the knowing employment of unauthorized aliens. The information collection is used by employers or by recruiters for enforcement of provisions of immigration laws that are designed to control the employment of unauthorized aliens.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000,000 responses at 9 minutes (.15 hours) per response and 20,000,000 record keepers at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,020,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202-514-3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, 1331 Pennsylvania Avenue, NW., Suite 1220, National Place Building, Washington, DC 20530.

Dated: June 1, 2001.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 01-14321 Filed 6-6-01; 8:45 am]

**BILLING CODE 4410-10-M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

#### Young Offender Initiative: Reentry Grant Program; Demonstration Grant Program

**AGENCY:** Employment and Training Administration (ETA), Labor.

**ACTION:** Notice of availability of funds and solicitation for grant applications (SGA).

**SUMMARY:** This notice contains all of the necessary information and forms needed to apply for grant funding. The Departments of Labor, Justice, and Health and Human Services are requesting applications for the Fiscal Year 2001 Young Offender Initiative: Demonstration Grant Program projects. Approximately \$11.5 million is available to fund demonstration grants to provide services aimed at youth who are or have been under criminal justice supervision or involved in gangs. The Department of Labor (DOL) has worked with the Office of Juvenile Justice and Delinquency Prevention in the U.S. Department of Justice (DOJ) and the Substance Abuse and Mental Health Services Administration (SAMHSA) in the U.S. Department of Health and Human Services (DHHS) in deciding to use these funds for an innovative model to serve young offenders, gang members, and at-risk youth. This model is called the One-Stop Youth Services Demonstration Model. Grants will be given in two categories: Category A: Large Areas and Category B: Small to Medium-Sized Areas. The model is based upon new research. Applicants can only apply under one of the two categories which must be clearly identified on the face sheet of the application.

Local Workforce Investment Boards (Local Boards), other political subdivisions of the State, and private entities are eligible to receive grant funds under this announcement. Local workforce investment areas who were awarded grants to administer Youth Offender Demonstration Projects in 1999 (SGA/DAA 98-015, dated September 2, 1998) and 2001 (SGA/DFA 01-101, dated December 11, 2000) are ineligible to apply under this Solicitation. However, first round (1999) grantees who were not awarded additional funds to continue their current programs through DOL's Letter of Competition, dated December 7, 2000, are eligible to apply.

**DATES:** The closing date for receipt of applications is Monday, October 1,

2001. Applications must be received by 4 p.m. (Eastern Daylight Savings Time) at the address below. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be honored. Telefacsimile (FAX) applications will not be honored.

**ADDRESSES:** Applications must be mailed to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: B. Jai Johnson, Reference: SGA/DFA 01-109, 200 Constitution Avenue, NW., Room S-4203, Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Questions should be faxed to B. Jai Johnson at (202) 693-2879, (this is a not a toll-free number). All inquiries should include the SGA/DFA number 01-109, and a contact name, fax and phone numbers. This announcement will also be published on the Internet on the Employment and Training Administration's Home Page at <http://www.doleta.gov>. Award notifications will also be published on the Home Page.

**SUPPLEMENTARY INFORMATION:** This solicitation is jointly issued by the U.S. Department of Labor (DOL), Employment and Training Administration (ETA); the U.S. Department of Justice (DOJ), Corrections Program Office (CPO), Office of Justice Programs (OJP); and U.S. Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) and Center for Mental Health Services (CMHS). Additional offices within DOJ's Office of Justice Programs helping to guide this effort include the Office of Juvenile Justice and Delinquency Prevention, the National Institute of Justice, and the Executive Office of Weed and Seed.

These grants make use of funds appropriated in the Fiscal Year (FY) 2001 Federal budget, and are the third round of Young Offender Initiative: Demonstration Grant Program projects. Two prior rounds of such grants have been awarded based on appropriations in the FY 1998 and FY 2000 budgets.

This solicitation is one of two dealing with the overall Young Offender Initiative: Reentry Grant Program (Initiative). It is for a smaller number of experimental Young Offender Initiative: Demonstration Grant Program projects and published coincident with the larger Young Offender Initiative: Reentry Grant Program solicitation.

Since 1998, at Congressional direction, DOL and DOJ have funded grants under the Youth Offender Demonstration Project to provide services focused on youth who are or have been under criminal justice supervision or involved in gangs or are at risk of this involvement. Based upon a recent interim report, Interim Report for Youth Offender Demonstration Project, Process Evaluation (Research and Evaluation Associates, Inc., March 2001), that assessed the Youth Offender demonstrations, there is solid evidence of a need to further test methods of effective delivery of services to the 14–24 year old target group in additional sites.

Therefore, DOL is proposing to fund additional Young Offender Initiative: Demonstration Grant Program projects (using funds separate from those dedicated to the 25 grants proposed in the Initiative, OJP–1320) in a small number of sites. Services will include youth development services and they will focus primarily on preparing young offenders, gang members, and at-risk youth ages 14 to 24 for positive engagement in pro-social activity and long-term employability and employment. The purpose of these additional DOL funds will be to further test a structured set of activities for subject target group, using a decisive organizational design grounded on research and PEPNet (Effective Practices) criteria.

This demonstration provides a unique opportunity for local areas to address the needs of the young offenders and at-risk youth through an array of services offered at One-Stop centers. Models developed under this latest effort will enhance public safety by assisting communities to develop and sustain an infrastructure to reintegrate offenders. In addition, DOL, DOJ and DHHS will be able to evaluate the projects, identify effective practices, and disseminate these practices to other communities.

This Notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. This announcement consists of four parts:

- Part I provides background, purpose, and goals of the Young Offender Initiative: Reentry Grant Program.
- Part II describes specific program, administrative and reporting requirements that will apply to all grant awards.
- Part III describes the application process.

- Part IV describes the review process and rating criteria that will be used to evaluate applications for funding.

## **Part I—Background and Purpose of the Reentry Program**

### *A. Background*

The Workforce Investment Act (WIA) of 1998 establishes comprehensive reform of existing Federal job training programs with amendments impacting service delivery under the Wagner Peyser Act, Adult Education and Literacy Act, and the Rehabilitation Act. WIA provides a framework for a national one-stop delivery system designed to meet both the needs of the nation's businesses and the needs of job seekers who want to further their careers. A number of other Federal programs are also identified as required partners under the One-Stop delivery system with the intention of providing comprehensive services for all Americans to access the information and resources available to them in the development and implementation of their career goals. The intent of the One-Stop delivery system is to establish programs and providers in co-located, coordinated and integrated settings that are coherent and accessible for individuals and businesses alike in over 600 workforce investment areas which have been established throughout the nation.

WIA establishes State and Local Boards focused on strategic planning, policy development, and oversight of the workforce system with significant authority for the Governor and chief elected officials to build on existing reforms in order to implement innovative and comprehensive One-Stop delivery systems. In addition, Youth Councils, subgroups of the Local Boards, assist in developing parts of the local plan relating to youth, recommending providers of youth services, and coordinating local youth programs and initiatives. With its requirements to form these interdisciplinary Youth Councils and to develop one comprehensive plan for youth services, WIA presents a unique opportunity to change the way workforce development programs (and other youth development programs as well) are organized and operated to serve youth. WIA and the Youth Councils offer local areas the chance to look at how both in-school and out-of-school youth services are blended and deployed. They provide the framework that local areas can build on in order to realign, enhance, and improve youth services so that they are more closely

coordinated, better utilized, and more effective.

In setting aside funds for this Solicitation, Congress noted “the severe problems facing out-of-school youth in communities with high poverty and unemployment and the inter-relatedness of poverty, juvenile crime, child abuse and neglect, school failure, and teen pregnancy.” This Notice provides a unique opportunity for selected workforce investment areas to address the needs of a special youth population—young offenders, gang members, and at-risk youth ages 14 to 24—through a comprehensive WIA effort. In addition, the models developed under this solicitation will enhance public safety by assisting communities to develop and sustain an infrastructure to reintegrate offenders, and will allow DOL, DOJ and DHHS to evaluate the program, identify effective practices, and disseminate these practices to other communities.

For this target population, unaddressed and untreated mental health problems often contribute to involvement in the juvenile justice system. Research indicates that between 50% to 80% of youth detained in juvenile facilities have mental health problems and that more than half of those with a psychological disorder also have a co-occurring substance abuse problem. Because untreated behavioral health problems can be severely debilitating, and because the prevalence of such disorders is significantly elevated for delinquent youth, it is critical that mental health and substance abuse services be incorporated into any comprehensive strategy that is designed to enhance youth functioning, decrease recidivism, and promote enduring workforce participation for this population.

In the previous two rounds of the youth offender grants (FYs 1998 and 2000), DOL in partnership with DOJ, had funded four demonstration projects under a separate model, the Education and Training for Youth Offenders Initiative. The grants under this model include projects in Columbus, OH; Indianapolis, IN; Tallahassee, FL; and a fourth site funded under SGA/DFA 01–101 to be announced by June 30, 2001. The first of these projects are in operation and provide comprehensive school-to-work education and training curricula for young offenders in juvenile corrections facilities and aftercare/reentry services upon the youths' return to their communities, with an emphasis on job placement and retention. Both DOL and DOJ are extremely interested in lessons learned from these sites, and

will continue to evaluate the programs and services offered under this model.

*B. Purpose and Goals of the Overall Young Offender Initiative: Reentry Grant Program*

The Demonstration Grant Program is part of the larger Young Offender Initiative: Reentry Grant Program (Initiative) developed collaboratively by DOL, DOJ and DHHS. The focus of the Initiative is to assist communities in planning and implementing comprehensive "reentry" programs to address the full range of challenges involved in helping young offenders released from incarceration make a successful transition back to the community. The goal of the Initiative is to protect community safety through the successful reintegration of offenders returning to the community, by ensuring that offenders:

- Become productive, responsible, and law-abiding citizens;
- Are provided with positive opportunities to engage in pro-social activities;
- Maintain long-term employment;
- Sustain a stable residence; and
- Successfully address their substance abuse issues and mental health needs.

There are challenges in achieving this goal. These challenges involve assessing not only the needs of released offenders, but also the needs of the communities to which they return. Central to this effort is helping communities prepare for returning offenders by developing the infrastructure to more effectively integrate them—to ensure that communities have the resources to address offender accountability, supervision, and other public safety concerns, as well as offender long-term employment, health, mental health, substance abuse, and other critical needs. Addressing offender supervision, self-sufficiency, public health and related issues promotes public safety.

Addressing the community's wide-ranging needs requires creating broad public/private partnerships to tap the expertise and resources of key stakeholders to contribute to the effort. With this broad support, it is expected that highly collaborative reentry programs will be successful in meeting the goals of this Initiative by providing communities with the reentry assessment and support systems that both offenders and communities need to protect public safety and the health and overall well-being of its citizens. This Initiative seeks to promote innovative programs by providing applicants latitude in structuring their programmatic efforts.

Both the larger Reentry Grant Program Initiative and the Young Offender Initiative: Demonstration Grant Program share several other goals as well, which are to:

- Create innovative models of collaboration among Governors' designated representatives; Federal, State, and local government agencies responsible for criminal justice, workforce development, mental health and substance abuse; CBOs, faith-based organizations, employers, offenders and their families;
- Support localities in their efforts to promote healthy youth development activities that will assist at-risk youth and young offenders to positively contribute to the life of their communities;
- Learn as much as possible about what works in offender reentry and programs through testing and evaluating promising approaches; and
- Develop information on best practices on young offender reentry and to share this information with the criminal justice, workforce development, mental health and substance abuse delivery systems.

These goals, when realized, will provide beneficial results to DOL, DOJ, and DHHS in their effort to refine and learn from program experience with offenders. These will be in addition to the body of knowledge we already have on this younger population. Like the grants under the larger program, the Young Offender Initiative: Demonstration Grant Program is a demonstration effort, however, the target group is 14–24 years old. DOL has already received interim results of its first evaluation of the program and they are reflected and incorporated into the new solicitation that is part of the larger collaborative effort.

As these reentry programs are implemented, it will also be critical to document what works, by evaluating these efforts, identifying effective practices, and disseminating them to other communities.

This Young Offender Initiative: Demonstration Grant Program's overarching goal is to protect community safety through the successful reintegration of offenders returning to the community by ensuring that these individuals are given the supports that will better enable them to be productive, responsible citizens who are crime-free, maintain long-term employment and a stable residence, and are engaged in substance abuse and mental health treatment as needed. The Young Offender Initiative: Demonstration Grant Program targets an age-related subset of the larger

initiative's target population and expands the focus to include other at-risk or gang-involved youth but retains the same goal of providing job training and employment opportunities, education, substance abuse treatment and rehabilitation, mental health, aftercare, housing and family support services, and juvenile/criminal justice supervision.

*C. Authority*

Sections 171 and 172 of the Workforce Investment Act of 1998, Pub. L. 105–220, 112 Stat. 936, *as amended*, 29 U.S.C. § 2801, *et seq.*, authorizes use of funds for demonstration projects. DOL is authorized to award and administer this program by the Department of Labor Appropriations Act, 2001, Pub. L. No. 106–554, 114 Stat. 2763A–3 (2000).

*D. Funding Availability*

The Department expects to award 6 grants approximately \$1.5 million each under category A (Large Areas) and 5 grants approximately \$600,000 each under category B (Small to Medium-Sized Areas) for a total of approximately \$11.5 million.

**Part II—Requirements**

*A. Eligible Participants*

Applicants are to target the youth population ages 14–24 focusing primarily on placing youth offenders, gang members, and at-risk youth into long term employment (part-time for ages 14–15).

*B. Administrative Requirements*

1. General

Grantee organizations will be subject to: these guidelines; the terms and conditions of the grant and any subsequent modifications; applicable Federal laws (including provisions in appropriations law); and any applicable requirements listed below—

- a. Workforce Investment Boards—20 Code of Federal Regulations (CFR) Section 667.220, published in the Federal Register, August 11, 2000 (65 Fed. Reg. 49294) (Administrative Costs).
- b. Non-Profit Organizations—Office of Management and Budget (OMB) Circulars A–122 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- c. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR Part 95 (Administrative Requirements).
- d. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR Part 97 (Administrative Requirements).

e. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR Parts 96 and 99.

**Note:** Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require an entity's procurement procedures must require that *all procurement transactions* must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award *does not* provide the justification or basis to sole-source the procurement, i.e., avoid competition.

## 2. Subgrants/Contracts

Subgrants and contracts must be awarded in accordance with 29 CFR 95.40. In compliance with Executive Orders 12876, 12900, 12928 and 13021, the grantee(s) are strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

## 3. Incorporation of New Information

Grantees must utilize any newly developed DOL/DOJ/SAMHSA research findings (which may become available after the grant awards) on how to run effective programs. Applicants therefore will be required to modify their demonstration program during the post-award planning process based upon any new information, as specified in the terms and conditions of the grant award. In order to assist with this effort, DOL, DOJ, and DHHS will design early technical assistance in the planning process to aid the grantees with the incorporation of program changes predicated on the new information.

## 4. Evaluation

As a condition for award, all applicants must agree to participate in a separately-funded evaluation. Applicants will not set aside funds for evaluation activities. All applicants must provide assurances in their proposals that they will cooperate with the evaluators and provide access to the data necessary to the evaluations. Awardees of the grants further agree to make available upon request to DOL-authorized evaluation contractor(s) data for a period not to exceed 24 months beyond the demonstration period (which should not exceed 24 months) through a no-cost extension of the grants. The availability of this data beyond the demonstration period will enable the contractor to perform follow-up analysis.

## C. Reporting Requirements

Applicants must clearly define their procedures for reporting progress on a quarterly basis (including data elements listed in Part II C.2 ) and for identifying and presenting the results of project interventions. Proposals should also describe in detail the specific reports and other deliverables to be provided to ETA as documentation of progress and results in terms of improved outcomes for the target population. An implementation plan to be submitted within 60 days of the grant execution and approved by DOL, DOJ, and DHHS quarterly reports, an annual report, and a final report summarizing progress are required for projects under this SGA. For financial reports, the grantee must consult its appropriate administrative regulations, 29 CFR Part 95 and 29 CFR 97.

### 1. Data Collection

All demonstration sites must collect and maintain participant records and compile administrative data from these projects to document results and accomplishments, and provide a learning experience for the workforce development system, DOL, DOJ and DHHS. The data requirements must include the following information in two age ranges (14–17 and 18–24):

- N. Number recruited;
- O. Number enrolled;
- P. Number who entered training;
- Q. Number who entered or reentered secondary school;
- R. Number who entered or reentered post-secondary school;
- S. Number who entered employment (total):
  - Subsidized and
  - Unsubsidized;
- T. Number "served by aftercare" programs;
- U. Number who entered the military;
- V. Number who entered national and community service;
- W. Number referred to other services such as dropout prevention, drug rehabilitation, mental health and substance abuse treatment services;
- X. Number who entered other job training programs;
- Y. Number referred to apprenticeship programs;
- Z. Number of in-school youth served; and
- AA. Number of out-of-school youth served.

As a measure of progress, grantees also must collect data on factors which predict future employment of youth prior to youth's employment full-time, full-year. Therefore, applicants must identify what factors consider to be

youth development indicators, e.g., dependability in participating in project activities; remaining free of further convictions; passing part or all of the GED examinations; being able to keep a part-time job; or making acceptable progress (credits earned) toward a diploma, etc. In addition, if applicable, data elements associated with WIA may be required (to be specified in the grantee's statement of work).

## D. Acknowledgment of Federal Funding

In all circumstances, the following must be displayed on printed materials:

Preparation of this material/item was funded by the United States Department of Labor under Grant Agreement No. [insert the appropriate grant agreement number].

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds must clearly state:

- a. The percentage of the total costs of the program or project which will be financed with Federal money;
- b. The dollar amount of Federal funds for the project or program; and
- c. The percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

## Part III—Application Process

### A. Eligible Applicants

Under this Initiative, Youth Offender: Demonstration Grant Program, there will be two (2) categories of eligible applicants; Applicants may only apply under one category. They are:

#### 1. Category A—Large Areas

Local Boards other political subdivisions of the State, and eligible private entities which provided services located in high-crime communities with a population greater than 400,000 and a high youth crime rate and a significant youth gang problem are eligible to receive grant funds under this announcement; or

#### 2. Category B—Small to Medium-Sized Areas

Local Boards, other political subdivisions of the State, and private entities which are all situated within high-crime communities with a population of at least 100,000 and not greater than 400,000 and a high youth crime rate and a significant youth gang problem are eligible to receive grant funds under this announcement.

All applicants in *both categories* are required to designate a specific area or

neighborhood (i.e., Empowerment Zones [EZs] and/or Economic Communities [ECs], etc.) to receive services under this demonstration.

Private entities not eligible for funds under this Notice are for-profit organizations, 501(c)(4) nonprofit organizations, and individuals. According to Section 18 of the Lobbying Disclosure Act of 1995, an organization described in Section 501 (c) (4) of the Internal Revenue Code of 1986 that engages in lobbying activities will not be eligible for the receipt of federal funds constituting an award, grant, or loan.

Eligible entities may include community development corporations, community action agencies, community-based and faith-based organizations, disability community organizations, health care organizations, children and family service agencies, public and private colleges and universities, and other qualified private organizations. Organizations or areas that operate the Department of Justice's Safe Futures or Comprehensive Community-Wide Approach to Gang Prevention, Intervention, and Suppression demonstrations can also apply through their Local Boards. Applicants should provide documentation from their local law enforcement agency showing support for the existence or emerging gang problem and other serious youth crime problems.

Entities other than a Local Board must submit an application for competitive grant funds in conjunction with the Local Board(s) the area in which the project is to operate. The term "in conjunction with" must mean that the application must include a signed certification by both the applicant and the appropriate Local Board (s) indicating that:

1. The applicant has consulted with the appropriate Local Board (and its Youth Council) during the development of the application; and
2. The activities proposed in the application are consistent with, and will be coordinated with, the One-Stop delivery system efforts of the Local Board(s).

If the applicant is unable to obtain the certification, it will be required to include information describing the efforts which were undertaken to consult with the Local Board and its Youth Council and indicating that the Local Board was provided, during the proposal solicitation period, a sufficient opportunity to cooperate in the development of the project plan and to review and comment on the application before its submission to the Department

of Labor. "Sufficient opportunity for Local Board review and comment" must mean at least 30 calendar days. Failure to provide information describing the efforts which were undertaken to consult with Local Board(s) will disqualify applicants.

The certification, or evidence of efforts to consult, must be with each Local Board in the service area in which the proposed project is to operate. These certifications must be included in the grant application, and will not count against the established page limitations. For the purposes of this portion of the application, evidence of efforts to consult with the Local Board must be demonstrated by written documentation, such as registered mail receipt, that attempts were made to share project applications with the Local Board in a timely manner. Local Board applicants and applicants that provide a signed certification by the applicant and the appropriate Local Board(s) will be given preference for award.

#### B. Submission of Applications

Each application clearly must identify the category under the Youth Offender: Demonstration Grant Program, the applicant is applying for funds. This information must appear on the face sheet of the application.

##### 1. The Application

Applicants must submit one (1) original and three (3) copies of their proposal, with original signatures. There are three required sections of the application: Section I—Project Financial Plan; Section II—Executive Summary; and Section III—Project Narrative (including Appendices, *not to exceed thirty pages*). Applications that fail to meet these requirements will not be considered.

*Section I—Project Financial Plan.* Section I of the application must include the following two required elements: (1) Standard Form (SF) 424, "Application for Federal Assistance," (Appendix A) and (2) "Budget Information Form," (Appendix B). All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funds. Applicants must indicate on the SF 424 the organization's IRS Status, if applicable. The Catalog of Federal Domestic Assistance (CFDA) number is 17-261. Section I will not count against the application page limits.

In preparing the Budget Information form, the Financial Plan must describe all costs associated with implementing the project that are to be covered with grant funds. In addition, Section I must

include a budget narrative/justification which will detail the cost breakout of each line item on the Budget Information Form. This must provide sufficient information to support the reasonableness of the costs included in the budget in relation to the service strategy and planned outcomes. The budget must be for the full duration of the project but may not exceed 30 months. All costs must be necessary and reasonable according to the Federal guidelines set forth in the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" (also known as the "Common Rule"), codified at 29 CFR Part 97 (97.22) and "Grants and Agreements with Institutes of Higher Education, Hospitals, and Other Non-Profit Organizations" (also known as OMB Circular A-110), codified at 29 CFR Part 95, (95.27).

*Section II—Executive Summary* (format requirements limited to no more than two single-spaced, single-sided pages). Each application must provide a project synopsis which identifies the following:

- The applicant;
- The consortium partners and the type of organizations they represent;
- The project service area;
- Whether the service area is an entire local workforce investment area, more than one local area, and/or all local areas in a State;
- The specific areas of focus in the announcement which are addressed by the project;
- The planned period of performance;
- A summary of the comprehensive strategy (e.g., who will provide services, who will be accountable for the project, etc.) for providing seamless service delivery and for addressing the multi-faceted barriers to training and employment which affect youth who are or who have been under criminal justice supervision or involved in gangs or who are at-risk of involvement;
- How counseling and other support needs will be addressed in the One-Stop delivery system;
- The actions already taken by the State or Local Workforce Investment Board to address the needs of at-risk youth in the One-Stop delivery system;
- The level of commitment the applicant (including all consortium members, if any) and other partners have to serving at-risk youth;
- The linkages between the project and the local WIA Youth Council through the One-Stop delivery system, as well as linkages with the business and education communities, mental health and substance abuse systems, and juvenile justice agencies; and

• A written confirmation that the applicant will cooperate with the evaluators.

*Section III—Project Narrative (format requirements limited to no more than thirty (30) double-spaced, single-sided, numbered pages).* Section III of the application, the project narrative, must contain the technical proposal that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this notice. Applicants MUST limit the project narrative section to no more than thirty (30) double-spaced and single-sided pages, which include any attachments provided by the applicants. Letters of general support or recommendation for a proposal must NOT be submitted and will count against the page limit. However, letters of commitment are required from partner/consortia organizations and will not count against the page limit.

The Project Narrative must be double-spaced, and on single-sided, numbered pages with the exception of format requirements for the Executive Summary. The Executive Summary must be limited to no more than two (2) single-spaced, single-sided pages. A font size of at least twelve (12) pitch is required throughout the application.

## 2. Youth Development Principles

Strength-based programming that is designed to build upon a youth's assets and enhance functioning at the individual, family, and community levels will foster healthy development and further advance the goals of youth involvement in pro-social activity. DOL, DOJ and DHHS expect models developed under this solicitation to be consistent with the youth development principles that Gary Walker described in the Sar Levitan Institute's *A Generation of Challenge: Pathways to Success for Urban Youth* (1997):

- Each young person needs to feel that at least one adult has a strong stake in his labor market success.
- Programs must be connected to employers; placement with one of these employers is possible and initial placement is one step in a continuing long-term relationship with a program that will advance the young person's employment and earnings.
- Each young person must feel at each step the need to improve education and credentials.
- Program support will be there for a long time.
- Effective connections are maintained between the programs and providers of support services.
- The program emphasizes civic involvement and service.

*Age Issues:* Also, critical to the new model is the distinction between two subpopulations within the solicitation target group: younger youth (ages 14 to 17) and older youth (ages 18 to 24). Younger youth require different sets of treatment and skills programming than those between the ages of 18 and 24, as they may have less exposure to the world of work and fewer of the necessary work-related skills or may not be able to enter into long-term, full-time work until they are older. Services intended for younger youth should, therefore, focus on pre-employment training, education, treatment and appropriate employment in preparation for long-term employment when they reach an appropriate age. Interventions for these youth that are the most effective are those that can make a positive impact upon both the youth and his or her family. The provision of strength-based family-centered therapy and supports designed to enhance family functioning and communication will thus facilitate the broader process of skill and competency development for the youth. For youth re-entering the community following institutional placement, it is particularly vital to offer therapeutic supports to aid the re-unification process. Older youth (18 to 24 year-olds) should focus on attaining their GEDs or diplomas, possibly pursuing higher education or additional vocational training, and obtaining unsubsidized full-time employment. The applicants must use the following structure:

### One-Stop Youth Services Demonstration Model

Demonstration projects under this model will operate in heavily impoverished communities in need of implementing comprehensive community-wide approaches to assist young offenders, gang members, and those at risk of becoming involved in gangs, all of whom may either be currently in school or out-of-school. These communities will have already built service capacity into their One-Stop delivery systems to expand the range and quality of services designed to prepare high-risk youth for high-quality employment with career development ladders and livable wages, but may not have fully implemented these activities. Grantees will be required to expand services in each of 3 areas: (1) gang prevention and suppression activities; (2) alternative sentencing for offenders; and (3) after-care and case management for incarcerated youth. In addition, grantees must provide education and mental health services, employment training, sports and recreation, youth

development services, and community services projects in order to reduce recidivism and procure for the target population long-term employment at livable wage levels. The grantees must place particular emphasis on enhancing existing case management, treatment, youth development, family involvement and support, and job placement services for youth on probation or for those who are reentering the community from corrections facilities. These support services should be provided throughout the entire employment search continuum, *i.e.*, from the beginning of the employment search until well after the procurement of employment. Projects need to include youth and families in project planning and activities. The projects also will maintain records of the number of contacts made after placement and the type of support services provided.

The projects also will implement an intensive and comprehensive aftercare system to reduce juvenile recidivism. Aftercare systems should be implemented while youth are still incarcerated to establish community links with faith-based organizations, parents or guardians, mental health and substance abuse treatment systems, schools, training and educational opportunities, parole systems, social contacts and activities, and mentors. The aftercare services planned for those individuals incarcerated must involve the staff and administrators of the juvenile corrections facilities where the youth are institutionalized.

*Structured Model Requirements:* New structured requirements for the model which all applicants must use are based, in part, on PEPNet effective practices criteria and the Interim Report for Youth Offender Demonstration Project, Process Evaluation (March 2001) for the first round of Young Offender Grants, which may be found at the Employment and Training Administration's website, <http://www.doleta.gov>. Applicants' proposals are required to demonstrate the following, which will be rated in the rating criteria:

#### (1) Well Conceived Plan:

- Program has a clear and focused vision and mission.
- Program goals and objectives are realistic and measurable.
- Stakeholders, including community partners, family member representatives, and front-line staff, are involved during program development and implementation.

(2) Established Partnership with the Juvenile Justice and Health Care Systems:

- Grantee is experienced in working with the Juvenile Justice and Health Care Systems.

(3) Collecting and Maintaining Data:

- A system for collecting and reporting program information is available and utilized.

(4) Community Support/Network:

- Program is supported by youth and family serving agencies including CBOs, faith-based organizations, and public service agencies.

- Projects need to include youth and families in project planning and activities.

(5) Grantee Involvement:

- Grantee is the lead agency, actively providing direction and coordination for the project.

- Grantee involvement and support is continuous.

(6) Connections with Workforce Development, Juvenile Justice and Health Care Systems:

- Grantee coordinates with and utilizes resources available through the Workforce Development, Juvenile Justice, and Health Care Systems.

(7) Leveraging Resources through Collaboration and Partnerships:

- Project effectively identifies and utilizes other resources and funding streams to support project goals.

(8) Continuous Improvement:

- Project conducts self-assessment and actively seeks and accepts available technical assistance.

(9) Shared Leadership and Information Sharing:

- Decision making and information is shared with stakeholders.

### 3. Program Components

The grant awards must be used to enhance and augment presently existing strategies which serve young offenders, out-of-school youth, and gang members or those at-risk of becoming gang-involved. Efforts should be made to integrate youth into a full range of educational, treatment, and alternative programs when appropriate. In addition to intensifying current systems, the projects also will link with and build upon available community resources such as educational (including special education), support, workforce development (engaging Local Boards/ Youth Councils), health care, child care, and transportation services. The projects will use these community resources to accomplish the successful transition of youth to independent living within the community, a reduction in recidivism, and the accomplishment of employment, training, and education goals. In order to address specifically the distinct needs and problems of young offenders, gang members, and

those at-risk of becoming gang-involved who are living in high-poverty localities, the overarching strategy for the model community projects should encompass the following:

*Purpose/Need:* Applicants must describe the need in the target neighborhood as demonstrated by issues such as severity of gang problems, the number of young offenders residing in the target community, gaps in availability of adolescent mental health and substance abuse treatment for at-risk youth, and the inability for existing services to address the needs of young offenders and gang members. Applicants should also relate the need to the overall purpose of the planned program components.

*Alternative sentencing/education:* Grantees must describe their plans for expanding alternative sentencing, including enhanced education services for young offenders. Project case managers and other staff must prepare the target population for sustainable high-quality employment by providing assistance to remain in school, return to school, enroll in GED and high school equivalency classes, or participate in additional alternative education such as long-distance learning programs or on-line courses. Applicants must describe the educational services that will be offered by the project, with particular attention given to the utilization of existing educational system services and the involvement of the schools in the area. Youth with emotional and behavioral disorders will benefit from evidence-based, culturally competent treatment interventions. Applicants must describe the process for providing assessment and treatment planning, as well as the options for individual and family therapy that will be made available. In addition, applicants must describe the overall use of project case managers and other staff in the planned program components that will provide educational services.

*Career preparation services:* The One-Stop Youth Services Demonstration Model must provide for employment preparation, youth development services, job placement, and linkages with the workforce development system. The model must focus on programs that train individuals for employment in fields in which technology skills are critical aspects of the jobs emerging in the regional labor market. The training model may also include basic skills and pre-apprenticeship training as appropriate, particularly for younger youth, e.g. ages 14–17. Applicants must address the various strategies that their models will employ to actively recruit the target

population, and must discuss the projected length of time necessary to determine the efficacy of their models' technical assistance.

*Case management/support services:*

Project case managers must prepare the target population for sustainable high-quality employment by utilizing intensive training and support services, including drug and alcohol treatment, mentoring and tutoring, child care, counseling, and other case management services. The framework for the model must provide for (as applicable): individual needs assessment; individual service strategies; long-term follow-up services; and linkages with human services, housing, health care, education, and transportation services; and gender-specific services (e.g., treatment for trauma associated with sexual abuse, and domestic violence prevention initiatives). Other strategies may include "soft skills" training (e.g., individual competency development efforts), like job behavior and life skills training, social skills and self-determination, conflict resolution, parenting classes, exposure to post-secondary education opportunities, and military service/national and community service projects. Service strategies must also focus on providing assistance to engage in job training, secure employment, fulfill legal restitution obligations, or establish successful independent living. Special-needs youth, including those with physical, psychiatric, and/or developmental disabilities must be provided with enhanced case management that will allow them to access a comprehensive system of care, including treatment, education, and individual and family support services.

Because this wide range of services should be provided by the proposed or existing partnerships of community organizations, applicants must submit memoranda of understanding (MOUs) with the local WIA partners and other critical agencies specifying the role of each party in the project. Applicants must describe the intensive training and support services identified above that will be offered as part of the planned program components, and must detail the role of project case managers in the provision of these training and support services. In addition, applicants must detail their capacity to sustain these activities for 2 years after funding under this solicitation is no longer available.

*Young Offender and Gang Prevention Advisory Board:* In order to institute a holistic approach to assisting the target population, family member representatives, employment, education, mental health, child welfare, substance

abuse, criminal justice, and community-based youth programs must be incorporated into the projects. In developing this interrelated system, grant funds must be used to create a young offender and gang prevention advisory board that participates in the coordination of all activities and provides input and community support to the project's leadership. The advisory board should be comprised of public and private sector representation, parents, youth members, and graduates of other young offender programs and will link with the local Youth Council to provide seamless delivery of services and maximize use of available resources. Applicants must describe the planned composition of the advisory board, with particular emphasis upon the process for selecting and seating the representation of the board. The applicant must describe the functions of the board and the process planned to utilize the board in designing the holistic delivery expected under the project. Grantees must also describe their plans for expanding gang prevention and suppression efforts in the target community, including expanded efforts by local law enforcement agencies.

*Aftercare:* Grant funds must link with existing resources to provide intensive aftercare services for young offenders transitioning from secure confinement in a juvenile corrections facility to the community. Projects must strategically coordinate community-wide efforts and resources to address reentry issues such as surveillance, supervision, graduated sanctions and incentives, linkages to community support systems (families, peers, schools, employers), transitional housing, and job training and placement activities. Applicants must describe clearly, detailed reentry plans for young offenders scheduled for release to their communities and their capacity to sustain their activities for 2 years after funding is no longer available. Strategies for effective case management services in aftercare programming include:

- Use of a reliable and validated risk assessment and classification instrument for establishing eligibility of the targeted population;
- Individual case planning that incorporates a family and community perspective;
- Provision of mental health and substance abuse assessment and referral to appropriate treatment services
- A mix of intensive surveillance and enhanced service delivery;
- Comprehensive, interagency transition planning that involves all critical stakeholders;

- A balance of incentives and graduated consequences coupled with the imposition of realistic, enforceable conditions;

- Work-related or work-oriented activities such as exposure to the workplace, on-the-job training, work experience, job shadowing, etc.;
- Coordination of resources of juvenile correctional agencies, juvenile courts, juvenile parole agencies, law enforcement agencies, social service providers, and local Workforce Investment Boards; and
- "Soft skills" training, e.g., individual competency development efforts, job behavior and life skills training; self determination and social skills training; conflict resolution and anger management; parenting classes; exposure to post-secondary education opportunities; and community service learning projects.

*Partnerships/Linkages:* In addition to enhancing already existing services and programs, projects must center any newly developed and implemented activities upon the needs of youth involved, or at risk of becoming involved, with the juvenile justice system and gangs. In order to accomplish this, applicants should use partnerships both (1) to enhance the young offender programs funded under this grant and (2) to provide complementary programs so as to link services within the target community and provide a diversity of options for all young offenders within the target area. These partnerships must agree to:

- Implement an education and employment program for young offenders, gang members, and at-risk youth in the target area, including coordination with the private sector to develop a specified number of career-track jobs for target area young offenders;
- Establish alternative sentencing and community service options for young offenders, gang members, and at-risk youth in the target area;
- Connect youth and their families to appropriate therapeutic and supportive services designed to enhance individual and family functioning;
- Expand gang suppression activities in the target area;
- Provide work-related or work-oriented activities such as exposure to the workplace, on-the-job training, youth development services, work experience, job shadowing, etc.; and
- Build connections to local workforce investment systems such as linkages with Local Boards while demonstrating approaches that ensure that high-risk youth are provided with quality workforce development services.

Applicants must outline how they will involve residents, youth, and others of the community in planning and involvement in the effort. Proposals must describe the efforts within the project to utilize existing services and programs, particularly those offered through the WIA One-Stop delivery system, the juvenile justice system, and health care system. Applicants must describe the efforts to be undertaken to coordinate services with private sector entities, including commitments for private sector jobs. Proposals must describe newly developed and implemented services and how these will enhance and augment presently existing strategies in the community.

In addition, proposals must specify the linkages between the One-Stop Youth Services Model, local One-Stop delivery systems and the Youth Council (which is part of the Workforce Investment Board) to ensure coordination of workforce development services. These linkages must include both existing and proposed strategies.

#### 4. Cost Sharing/Leveraging Funds

Applicants also should discuss their plans to leverage and align with other funds or resources in order to build permanent partnerships for the continuation of services, and should provide some discussion of the nature of these leveraged resources, i.e., Federal, non-Federal, cash or in-kind, State and county, foundation, capital equipment, and other funds. Also, the Federal Bonding Program and the Work Opportunity Tax Credit (WOTC) should be considered as potential tools to assist with young offender employment placements. Information about these programs may be found on ETA's website at <http://www.doleta.gov>.

#### C. Delivery of Applications

##### 1. Hand Delivered Proposals

Mailed applications must be mailed in time to be received at the address identified above by 4 P.M. (Eastern Daylight Savings Time), on Monday, October 1, 2001. We prefer that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4:00 P.M. (Eastern Daylight Savings Time), on Monday, October 1, 2001 at the address identified above. All overnight mail will be considered to be hand delivered and must be received at the designated place by the specified closing date and time.

## 2. Telegraphed and/or Faxed Applications Will Not Be Honored

Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and must be received by the above specified date and time.

## 3. Late Applications

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it:

- Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post-marked by the 15th of the month); or

- Was sent by the U.S. Postal Service Express Mail Next Day Service, Post Office to Addressee, not later than 4:00 P.M. at the place of mailing two working days prior to the dateline date specified for receipt of proposals in this SGA. The term "working days" excludes weekends and federal holidays.

The only acceptable evidence to establish the date of mailing of an application received after the deadline date for the receipt of proposals sent by the U.S. Postal Service and on the original receipt from the U.S. Postal Service. The term "post-marked" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

## 4. Withdrawals

Applications may be withdrawn by written notice or telegram (including a mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

### D. Performance Period

The period of performance for all grants awarded under this competition,

will be for 30 months from the date the grant is awarded. The first 24 months must be devoted to providing program services to eligible youth as defined in this notice. The final six months will be solely for organizing participant case files, providing the files to the demonstration's evaluator within two months after grant-funded services terminate, and participating in a final site visit interview with the evaluators. The budget submitted for the period of performance must cover the full 30 months.

### Part IV—Review Process and Rating Criteria

The technical panel which will be composed of peer reviewers and the three agencies personnel, will make a careful evaluation of applications against the criteria established in this Notice. The panel will review grant applicants against the criteria listed below on the basis of 100 points with an additional 5 points available for non-federal or leveraged resources. Final funding decisions will be based on the rating of applications as a result of the review process, and other factors such as geographic balance, availability of funds, and what is most advantageous to the Government. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant(s) with or without the discussions with the offeror(s). In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer.

#### Model Rating Criteria

Each application under this category will be evaluated against the following rating criteria:

- Establishment of and adherence to model structure requirements (15 points), see Part III.B.2; planned or committed linkages between the One-Stop Youth Services Demonstration Model, the One-Stop delivery system (WIA local board and youth council) and the juvenile justice and health care systems (20 points) = (35 total points):

- Plan to enhance and augment alternative sentencing, including educational, youth development, mental health, substance abuse, and supportive services and case management (7 points); role of project case managers in these delivery strategies (4 points); plan for linking with schools for co-

enrollment, etc. (4 points) = (15 total points);

- Plan and capacity for conducting intensive comprehensive aftercare for enhancing positive youth development and preventing recidivism (15 points);

- Level of planned or committed participation of educational agencies/schools, health care agencies (5 points); and other public sector, WIA, and private sector partners (5 points); employment-related connections with the business community (5 points) = (15 total points);

- Plan for enhancing gang prevention and suppression efforts, and use of a young offender and gang prevention advisory board to achieve coordination (6 points); establishment of creative partnerships with local community grassroots organizations which provide services to the target population (4 points) = (10 total points);

- Need in target neighborhood, as demonstrated by severity of gang problem, the number of young offenders residing in the target community, and the barriers facing existing services to reach young offenders and gang members, such as gaps in availability of mental health and substance abuse treatment = (5 points); and

- Plan to fulfill reporting requirements; and confirmation of cooperation with DOL evaluators (5 points).

- Leveraging of Funding (5 additional points).

We will give up to five (5) additional rating points to proposals which include non-Federal resources that expand the dollar amount, size and scope of the proposal. The applicant may include any leveraging or co-funding anticipated. To be eligible for the additional points in the criterion, the applicant must list the source(s) of funds, the nature, and activities anticipated with these funds under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding.

Signed at Washington, DC, this 5th day of June, 2001.

**Laura A. Cesario,**  
Grants Officer.

Appendix A: Application for Federal Assistance (SF-424)

Appendix B: Budget Information Form

Appendix C: Cover Sheet

BILLING CODE 4510-30-U

**APPLICATION FOR  
FEDERAL ASSISTANCE**

**APPENDIX "A"**

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application <input type="checkbox"/> Construction  <input type="checkbox"/> Non-Construction		Preapplication <input type="checkbox"/> Construction  <input type="checkbox"/> Non-Construction	2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE		State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier
5. APPLICANT INFORMATION				
Legal Name:			Organizational Unit:	
Address (give city, county, State and zip code):			Name, telephone number and fax number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN):  <div style="display: flex; justify-content: space-around;"> <span><input type="text"/></span> <span><input type="text"/></span> <span>-</span> <span><input type="text"/></span> </div>			7. TYPE OF APPLICANT: (enter appropriate letter in box) <input type="checkbox"/>  A. State B. County C. Municipa D. Township E. Interstate F. Intermunicipal G. Special District  H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____	
8. TYPE OF APPLICATION: <input type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision  If Revision, enter appropriate letter(s) in box(es): <input type="checkbox"/> <input type="checkbox"/> A. Increase Award      B. Decrease Award      C. Increase Duration D. Decrease Duration      Other (specify): _____			9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:  <div style="display: flex; justify-content: space-around;"> <span><input type="text"/></span> <span><input type="text"/></span> <span>-</span> <span><input type="text"/></span> <span><input type="text"/></span> <span><input type="text"/></span> </div> TITLE:			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):				
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:		
Start Date	Ending Date	a. Applicant	b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?		
a. Federal	\$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____  b. NO. <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
b. Applicant	\$ .00			
c. State	\$ .00			
d. Local	\$ .00			
e. Other	\$ .00			
f. Program Income	\$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?		
g. TOTAL	\$ .00	<input type="checkbox"/> Yes    If "Yes," attach an explanation. <input type="checkbox"/> No		
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.				
a. Typed Name of Authorized Representative		b. Title		c. Telephone number
d. Signature of Authorized Representative				e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)  
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry:   | Item: | Entry:   |
|-------|--|-------|--|
| 1.    | Self-explanatory.  | 12.   | List only the largest political entities affected (e.g., State, counties, cities).   |
| 2.    | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).  | 13.   | Self-explanatory.  |
| 3.    | State use only (if applicable)   | 14.   | List the applicant's Congressional District and any District(s) affected by the program or project.  |
| 4.    | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.  | 15.   | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5.    | Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.  | 16.   | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.  |
| 6.    | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.  | 17.   | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.  |
| 7.    | Enter the appropriate letter in the space provided.  | 18.   | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)  |
| 8.    | Check appropriate box and enter appropriate letter(s) in the space(s) provided.<br><br>- "New" means a new assistance award.<br>- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |       |  |
| 9.    | Name of Federal agency from which assistance is being requested with this application.   |       |  |
| 10.   | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.   |       |  |
| 11.   | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.   |       |  |

**APPENDIX "B"****PART II - BUDGET INFORMATION****SECTION A - Budget Summary by Categories**

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate )			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

**SECTION B - Cost Sharing/Match Summary (if appropriate)**

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

**NOTE:** Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

## SECTION A - Budget Summary by Categories

1. **Personnel:** Show salaries to be paid for project personnel which you are required to provide with W2 forms.
2. **Fringe Benefits:** Indicate the rate and amount of fringe benefits.
3. **Travel:** Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.
4. **Equipment:** Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of \$5,000 or more. Also include a detailed description of equipment to be purchased including price information.
5. **Supplies:** Include the cost of consumable supplies and materials to be used during the project period.
6. **Contractual:** Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.
7. **Other:** Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.
8. **Total, Direct Costs:** Add lines 1 through 7.
9. **Indirect Costs:** Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.
10. **Training /Stipend Cost:** (If allowable)
11. **Total Federal funds Requested:** Show total of lines 8 through 10.

## SECTION B - Cost Sharing/Matching Summary

***Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.***

**NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.**

**APPENDIX "C"**

**C O V E R S H E E T**

**APPLICATION FOR FUNDING UNDER  
SGA/DFA - 01-109**

**YOUNG OFFENDER INITIATIVE: REENTRY GRANT PROGRAM  
YOUNG OFFENDER INITIATIVE: DEMONSTRATION GRANT  
PROGRAM**

**Name of Applicant:** \_\_\_\_\_

**Contact Person:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_ **Fax Number:** \_\_\_\_\_

**CATEGORIES: (MUST CHECK ONE)**

\_\_\_\_\_ **CAT. A - Large Areas ( high-crime communities with a  
population greater than 400,000)**

\_\_\_\_\_ **CAT. B - Small to Medium-Sized Areas (high-crime  
communities with a population of at least  
100,000 and not greater than 400,000)**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-272 and 50-311]

### PSEG Nuclear LLC; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 243 and 224 to Facility Operating License Nos. (FOLs) DPR-70 and DPR-75 issued to PSEG Nuclear LLC, which revised the FOLs and Technical Specifications for operation of the Salem Nuclear Generating Station, Unit Nos. 1 and 2, located at the licensee's site on the southern end of Artificial Island in Lower Alloways Creek Township, Salem County, New Jersey. Salem, New Jersey, is located approximately 7.5 miles northeast of the site. The amendment is effective as of the date of issuance.

The amendment modified the FOLs and Technical Specifications to increase the licensed power level by approximately 1.4% from 3,411 megawatts thermal (MWt) to 3,459 MWt. The changes are anticipated to increase each unit's net electrical output by 16 MWe. The request is based on the installation of the CE Nuclear Power LLC Crossflow ultrasonic flow measurement system with its ability to achieve increased accuracy in measuring steam generator feedwater flow. The amendment also included administrative changes to the Salem Unit No. 1 FOL and the Salem TS Bases.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on January 30, 2001 (66 FR 8242). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality

of the human environment (66 FR 26885).

For further details with respect to the action see (1) the application for amendment dated November 10, 2001, as supplemented by letters dated December 5, 2000, March 28 and April 2, 2001, and three letters dated April 20, 2001, (LNR-01-0099, LRN-01-0115, and LRN-01-0123); (2) Amendment Nos. 243 and 224 to License Nos. DPR-70 and DPR-75; (3) the Commission's related Safety Evaluation; and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (<http://www.nrc.gov>).

Dated at Rockville, Maryland, this 25th day of May 2001.

For the Nuclear Regulatory Commission.

**Robert J. Fretz,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 01-14357 Filed 6-6-01; 8:45 am]

**BILLING CODE 7590-01-M**

## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.191, "Fire Protection Program for Nuclear Power Plants During Decommissioning and Permanent Shutdown," provides guidance to licensees and applicants on methods acceptable to the NRC staff for complying with the regulations regarding fire protection programs for licensees who have certified that their plants have permanently ceased operations and that the fuel has been permanently removed from the reactor vessels.

Comments and suggestions in connection with items for inclusion in guides currently being developed or

improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's web site at [www.nrc.gov](http://www.nrc.gov) under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site; Regulatory Guide 1.191 is under Accession Number ML011500010. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to (301)415-2289, or by email to [distribution@nrc.gov](mailto:distribution@nrc.gov). Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

**Authority:** (5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 25th day of May 2001.

For the Nuclear Regulatory Commission.

**Roy P. Zimmerman,**

*Deputy Director, Office of Nuclear Regulatory Research.*

[FR Doc. 01-14356 Filed 6-6-01; 8:45 am]

**BILLING CODE 7590-01-P**

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### June 14, 2001 Public Hearing; Sunshine Act Meeting

**TIME AND DATE:** 2 p.m. Thursday, June 14, 2001.

**PLACE:** Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

**STATUS:** Hearing OPEN to the Public at 2 pm.

**PURPOSE:** In conjunction with the quarterly meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

**PROCEDURE:** Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 pm, June 13, 2001. The notice must include the individual's name, organization, address, and telephone number, and a

concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 pm, June 13, 2001. Such statements must be typewritten, double-spaced and may not exceed twenty-five (25) pages.

Upon receipt of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

**CONTACT PERSON FOR INFORMATION:**

Information on the hearing may be obtained from Connie M. Downs at (202) 336-8438, via facsimile at (202) 408-0297, or via email at cdown@opic.gov.

Dated: June 4, 2001.

**Connie M. Downs,**

*OPIC Corporate Secretary.*

[FR Doc. 01-14432 Filed 6-4-01; 4:59 pm]

**BILLING CODE 3210-01-M**

**OFFICE OF PERSONNEL  
MANAGEMENT**

**Proposed Collection; Comment  
Request for Clearance of a Revised  
Information Collection: RI 25-14 and RI  
25-14A**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for clearance of a revised information collection. RI 25-14, Self-Certification of Full-Time School Attendance, is used to survey survivor annuitants who are between the ages of 18 and 22 to determine if they meet the requirements of Section 8341(a)(C), and Section 8441, title 5, U.S. Code, to receive benefits as a student. RI 25-14A, Information and

Instructions for Completing the Self-Certification of Full-Time School Attendance, provides instructions for completing the Self-Certification of Full-Time School Attendance survey form.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 14,000 RI 12-14 forms are completed annually. We estimate it takes approximately 12 minutes to complete the form. The annual burden is 2,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before August 6, 2001.

**ADDRESSES:** Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415-3540.

*For Information Regarding  
Administrative Coordination Contact:*  
Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01-14333 Filed 6-6-01; 8:45 am]

**BILLING CODE 6325-50-P**

**OFFICE OF PERSONNEL  
MANAGEMENT**

**Proposed Collection; Comment  
Request for Clearance of a Revised  
Information Collection: RI 20-1**

**AGENCY:** Office of Personnel  
Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Public Law 104-13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management

and Budget (OMB) a request for clearance of a revised information collection. Annuitants who were entitled to minimum annuity before the repeal of the minimum annuity provisions on February 27, 1986, continue to be paid minimum annuity. OPM uses RI 20-1, Minimum Annuity Application, to determine if an annuitant qualifies for minimum annuity.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of OPM, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 50 RI 20-1 forms will be completed annually. We estimate it takes approximately 15 minutes to complete the form. The annual burden is 13 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606-8358, or E-mail to mbtoomey@opm.gov.

**DATES:** Comments on this proposal should be received on or before August 6, 2001.

**ADDRESSES:** Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415-3540.

*For Information Regarding  
Administrative Coordination Contact:*  
Donna G. Lease, Team Leader, Forms Analysis and Design, Budget and Administrative Services Division, (202) 606-0623.

Office of Personnel Management.

**Steven R. Cohen,**

*Acting Director.*

[FR Doc. 01-14334 Filed 6-6-01; 8:45 am]

**BILLING CODE 6325-50-P**

**RAILROAD RETIREMENT BOARD**

**Proposed Collection; Comment  
Request**

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement

Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Railroad Service and Compensation Reports; OMB 3220-0008.

Under section 6 of the Railroad Unemployment Insurance Act (RUIA) and Section 9 of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) maintains for each railroad employee a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the compensation by the employee's railroad employer(s), except in cases when an employee files a protest pertaining to his or her reported compensation within the statute of limitations cited in section 6 of the RRA and section 9 of the RRA.

To enable the RRB to establish and maintain the record of compensation, employers are required to file with the RRB, in such manner and form and at such times as the RRB prescribes, reports of compensation of employees. The information reporting requirements are prescribed in 20 CFR 209.6. The RRB utilizes Form BA-3a, Annual Report of Compensation and Form BA-4, Report of Creditable Compensation Adjustments, to secure the required information from railroad employers. Employers currently have the option of submitting the reports on the aforementioned forms, or, in like format, on magnetic tape, tape cartridges, PC diskettes, or CD-ROM as outlined in the RRB's Reporting Instructions to Employers. Submission of the reports is mandatory. One response is required of each respondent. Minor editorial changes are proposed to Form BA-3a and BA-4.

The completion time for Form BA-3a is estimated at between 33.3 hours per

response for electronic submissions to 85 hours for manual paper responses. The completion time for Form BA-4 is estimated at 60 minutes per response.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 01-14372 Filed 6-6-01; 8:45 am]

**BILLING CODE 7905-01-M**

## **RAILROAD RETIREMENT BOARD**

### **Proposed Collection; Comment Request**

**SUMMARY:** In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Sick Pay and Miscellaneous Payments Report; OMB 3220-0175. Under section 6 of the Railroad Unemployment Insurance Act (RUIA) and section 9 of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) maintains for each railroad employee a record of compensation paid to that employee by all railroad employers for whom the employee worked after 1936. This record, which is used by the RRB to determine eligibility for, and amount of, benefits due under the laws it administers, is conclusive as to the amount of compensation paid to an employee during such period(s) covered by the report(s) of the

compensation by the railroad employer(s). Further, the Railroad Retirement Solvency Act of 1983 added subsection 1(h)(8) to the RRA which expanded the definition of compensation for purposes of computing the Tier 1 portion of an annuity to include sickness payments and certain payments other than sick pay which are considered compensation within the meaning of section 1(h)(8). The information reporting requirements for employers are prescribed in 20 CFR part 209.

To enable the RRB to establish and maintain the record of compensation, employers are required under section 6 of the RUIA and section 9 of the RRA to file with the RRB, in such manner and form and at such times as the RRB by rules and regulation may prescribe, reports of compensation of employees.

The RRB utilizes Form BA-10, Report of Miscellaneous Compensation and Sick Pay, to collect information regarding sick pay and certain other types of payments, referred to as miscellaneous compensation, under section 1(h)(8) of the Railroad Retirement Act from railroad employers. In addition, the form is used by employers to report any necessary adjustments in the amounts of sick pay or miscellaneous compensation. Employers have the option of submitting the reports on the aforementioned form, or, in like format, on magnetic tape, tape cartridges or PC diskettes. Submission of the mandatory reports is requested annually. One response is required of each respondent. Minor editorial changes are proposed to Form BA-10. The completion time for Form BA-10 is estimated at 55 minutes per response.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751-3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611-2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 01-14373 Filed 6-6-01; 8:45 am]

**BILLING CODE 7905-01-M**

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Extension: Rule 23c-3 and Form N-23c-3; SEC File No. 270-373; OMB Control No. 3235-0422]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, NW., Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350 *et. seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension and approval of the collections of information discussed below.

Rule 23c-3 under the Investment Company Act of 1940 [17 CFR 270.23c-3] is entitled: "Repurchase of Securities of Closed-End Companies." The rule permits certain closed-end investment companies ("closed-end funds" or "funds") periodically to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval System ("EDGAR")) attached to Form N-23c-3 [17 CFR 274.221], a cover sheet that provides limited information about the fund and the type of offer the fund is making.<sup>1</sup> The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity

<sup>1</sup> Form N-23c-3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act (15 U.S.C. 80a-24) and the rules that implement section 24.<sup>2</sup>

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N-23c-3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or the NASD to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

The Commission staff estimates that 23 funds currently rely upon the rule. The staff estimates that each fund spends approximately 80 hours annually in preparing, mailing, and filing shareholder notifications for each repurchase offer, 4 hours annually in preparing and filing Form N-23c-3, 6

<sup>2</sup> Rule 24b-3 under the Investment Company Act [17 CFR 270.24b-3], however, would generally exempt the fund from that requirement when the materials are filed instead with the National Association of Securities Dealers ("NASD"), as nearly always occurs under NASD procedures, which apply to the underwriter of every fund.

hours annually in preparing disclosures in the annual shareholder report concerning the fund's repurchase policy and recent offer, 28 hours annually in preparing procedures to protect portfolio liquidity, and 8 hours annually in performing subsequent reviews of these procedures. The total annual burden of the rule's paperwork requirements for all funds thus is estimated to be 2898 hours. This represents an increase of 1638 hours from the prior estimate of 1260 hours. The increase results primarily from an increase in the number of funds relying upon the rule from 10 to 23 funds.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule and form is mandatory only for those funds that rely on the rule in order to repurchase shares of the fund. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 1, 2001.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 01-14329 Filed 6-6-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 155, OMB Control No. 3235-0549, SEC File No. 270-492;

Rule 477, OMB Control No. 3235-0550, SEC File No. 270-493.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 155 under the Securities Act provides safe harbors for a registered offering following an abandoned private offering, or a private offering following an abandoned registered offering, without integrating the registered and private offering in either case. Rule 155 requires any prospectus filed as a part of a registration statement after a private offering to include disclosure regarding abandonment of the private offering. Similarly, the rule requires an issuer to provide each offeree in a private offering following an abandoned registered offering with: (1) Information concerning withdrawal of the registration statement; (2) the fact that the private offering is unregistered; and (3) the legal implications of the offering's unregistered status. The likely respondents will be companies. All information submitted to the Commission is available to the public for review. Companies only need to satisfy the Rule 155 information requirements if they wish to avail themselves of the rule's safe harbors. The Rule 155 information is required only on occasion. It is estimated that 600 issuers will file Rule 155 submissions annually at an estimated 4 hours per response. Also, it is estimated that 50% of the 2,400 total annual burden hours (1200 burden hours) would be prepared by the company. We estimate that the company's outside counsel would prepare the other 1,200 burden hours.

Rule 477 under the Securities Act sets forth procedures for withdrawing a registration statement or any amendment or exhibits thereto. The Rule provides that if a registrant applies in anticipation of reliance on Rule 155's registered-to-private safe harbor, the registrant must state in the withdrawal application that the registrant plans to undertake a subsequent private offering in reliance on the rule. Without this statement, the Commission would not be able to monitor issuers' reliance on and compliance with Rule 155(c). The likely respondents will be companies. All information submitted to the Commission under Rule 477 is available to the public for review. Information provided under Rule 477 is mandatory.

The information is required on occasion. It is estimated that 300 issuers will file Rule 477 submissions annually at an estimated one-hour per response for a total annual burden of 300 hours.

Finally, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 30, 2001.

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-14330 Filed 6-6-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44376; File No. SR-ISE-00-19]

### Self Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto by the International Securities Exchange LLC Adopting an Obvious Error Rule

June 1, 2001.

#### I. Introduction

On November 20, 2000, the International Securities Exchange LLC ("ISE" or "Exchange"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to give the ISE the authority to bust or adjust trades that result from clearly erroneous orders or quotations.

The proposed rule change was published for comment in the **Federal Register** on January 18, 2001.<sup>3</sup> One comment letter was received on the

proposal.<sup>4</sup> On May 30, 2001, the ISE submitted Amendment No. 1 to the proposed rule change to the Commission.<sup>5</sup> This Order approves the proposed rule change. In addition, the Commission is issuing notice of, granting accelerated approval to, and soliciting comments on, Amendment No. 1 to the proposed rule change.

#### II. Description of the Proposal

The Exchange proposes to adopt new ISE Rule 720, as amended, that would allow it to either adjust or bust a transaction in circumstances where a member or its customer has made an error and the price of the execution is "obviously" not correct. The proposed rule contains objective standards regarding when a transaction was clearly the result of an "obvious error," under what circumstances a trade would be adjusted or busted, and to what price a trade would be adjusted if adjustment were appropriate under the circumstances.

Under proposed ISE Rule 720, when a member believes that it has participated in a transaction that was the result of an obvious error, it must notify ISE Market Control within a specified time of the execution. The proposed rule requires Exchange market makers, who are continuously monitoring their transactions on the ISE, to notify ISE Market Control within five minutes of an execution. The proposed rule allows Electronic Access Members ("EAMs"), who may handle customer orders on multiple exchanges simultaneously and who may need to contact customers for instruction, up to twenty minutes to notify ISE Market Control. Absent unusual circumstances, ISE Market Control would not grant relief unless notification is made within the prescribed time periods.<sup>6</sup>

<sup>4</sup> This comment letter is more fully discussed below in Section III, Comment and Response. See Letter from George Brunelle, Brunelle & Hadjicow, to Jonathan G. Katz, Secretary, Commission, dated February 6, 2001 ("Brunelle Letter").

<sup>5</sup> Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Susie Cho, Division of Market Regulation ("Division"), Commission, dated May 29, 2001 ("Amendment No. 1"). In Amendment No. 1, the ISE proposed to change the composition of the Obvious Error Panel to comprise two Electronic Access Members and two members that are market makers on the Exchange. The ISE also amended the proposed rule change to state that the ISE Market Control, not the Obvious Error Panel, would determine the theoretical price of an option where there are no quotes to be relied on for comparison purposes. Finally, the ISE clarified its procedures for appeal of a decision by ISE Market Control to the Obvious Error Panel.

<sup>6</sup> The provision permitting ISE Market Control to grant relief in "unusual circumstances" is intended primarily to encompass situations where EAMs and market-makers might make a request a few minutes

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 43830 (January 10, 2001), 66 FR 4880 (January 18, 2001).

ISE Market Control would determine whether there was an obvious error according to the following objective criteria: (1) An obvious error would be deemed to have occurred during normal market conditions when the execution price of a transaction is higher or lower than the theoretical price<sup>7</sup> for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more; and (2) an obvious error would be deemed to have occurred during fast market conditions when the execution price of a transaction is higher or lower than the theoretical price for the series by an amount equal to at least three times the maximum bid/ask spread allowed for the option, so long as such amount is 50 cents or more.

If it is determined that a transaction is the result of an obvious error, ISE Market Control will take one of the following actions: (1) Where each party to the transaction is an Exchange market maker, the execution price of the transaction would be adjusted unless both parties agree to bust the trade; or (2) where at least one party to the obvious error is not a market maker on the Exchange, the trade would be busted unless both parties agree to adjust the price of the transaction. The default action would be taken unless agreement is reached within ten minutes in the case where both parties are Exchange market makers, and within thirty minutes where at least one party is not an Exchange market maker. Upon taking final action, Market Control would be required to promptly notify both parties to the trade.

Where an adjustment is made to a transaction price, the adjusted price would be determined by objective criteria. The adjusted price would be equal to the theoretical price of the option in the case where the erroneous price is displayed in the market and subsequently executed by quotes or orders that did not exist in the system at the time the price was entered.

outside the set time limits, if they have a legitimate reason for the delay. According to the ISE, one such situation would be, for example, if a firm's system was down and after trying to fix it, the firm finds an obvious error among the orders that have queued up. On the other hand, EAMs and market makers who fail to make a timely request because they failed to monitor their trades would not be granted relief. Telephone conversation between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Susie Cho, Special Counsel, Division, Commission, on May 29, 2001.

<sup>7</sup> The theoretical price of an option in the case of an erroneous bid (offer) is the last bid (offer), just prior to the trade, found on the exchange that has the most liquidity in that option other than the ISE. If there are no quotes for comparison purposes, the theoretical price will be determined by ISE Market Control.

Proposed ISE Rule 720 further specifies that the Exchange must designate a least ten market maker representatives and at least ten EAM representatives to ISE to be called upon to serve on an Obvious Error Panel, as needed.<sup>8</sup> The Obvious Error Panel would be comprised of four members. Two of the representatives must be directly engaged in market making activity and two of the representatives must be employed by an EAM. Proposed ISE Rule 720 provides that an Obvious Error Panel would have the authority to, upon request by a party to a potential obvious error, review whether ISE Market Control used the correct theoretical price and whether an adjustment was made at the correct price. A request for a review must be made in writing within thirty minutes after a party receives verbal notification of a final determination by ISE Market Control, except that if notification is made after 3:30 p.m. Eastern time, either party would have until 9:30 a.m. Eastern time the next trading day to request review. The Obvious Error Panel would be permitted to overturn or modify an action taken by ISE Market Control upon agreement by a majority of the panel representatives; if the Obvious Error Panel vote were split 2–2, then the decision of ISE Market Control would stand.<sup>9</sup> All determinations by an Obvious Error Panel will be made on the same day as the transaction in question, or the next trading day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trading day. The determination of the Obvious Error Panel would be final.

### III. Comment and Response

#### A. Comment Letter

The Commission received one comment letter regarding the proposal.<sup>10</sup> Overall, the commenter believed that the proposed rule would unfairly injure public investors, would damage the public options markets and would subvert the Commission's newly amended Quote Rule.<sup>11</sup>

Specifically, the commenter argued that the concept of "theoretical price" is arbitrary.<sup>12</sup> The commenter believed that the proposed rule change ignores the fact that many different theoretical

pricing formulae exist and their application by different parties to the same trading situations can produce widely divergent calculations of the theoretical price.<sup>13</sup> The commenter also stated that even in situations where the ISE recognizes that the theoretical price is not objectively determinable, the ISE had proposed to allow an Obvious Error Panel comprised entirely of market makers to determine the theoretical price without third-party oversight.<sup>14</sup>

The commenter also objected that the limitation on the composition of the Obvious Error Panel to market makers would tend to create opportunities for reciprocity and would constitute, in itself, a conflict of interest.<sup>15</sup> The commenter worried that the proposal would give members an incentive and opportunity to take unfair advantage of the public by manipulating the "obvious error" process to entice public investors into trading at prices deliberately set in excess of the maximum bid/ask limits.<sup>16</sup> The commenter stated that the proposal contains no mechanism for disclosing to public investors the facts underlying a decision to cancel one of their trades, nor any procedure for appealing from such a decision to an impartial tribunal.<sup>17</sup> Finally, the commenter argued that the proposal would unfairly impose losses from obvious error trades only on the public investor and not on market makers who commit "obvious" trading errors.<sup>18</sup>

#### B. ISE Response

The ISE responded by stating that the protection afforded by the proposal is applied equally to all market participants, whether they are market makers entering quotations or investors entering limit orders.<sup>19</sup> The ISE later submitted Amendment No. 1 to the proposal.<sup>20</sup>

In response to the commenter's argument that the proposal would violate the Commission's Quote Rule, the ISE argued that its proposal is consistent with the Quote Rule, because it is narrowly crafted to apply in a fair and even-handed manner only in cases where any objective person would agree that the error was obvious.<sup>21</sup> The ISE stated that there is no support for the

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 5.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 6.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 6–7.

<sup>19</sup> Letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Jonathan G. Katz, Secretary, Commission, dated February 27, 2001 ("ISE Response").

<sup>20</sup> See Amendment No. 1, *supra* note 5.

<sup>21</sup> ISE Response, *supra* note 19 at 3.

<sup>8</sup> Under proposed Supplementary Material .05 to ISE Rule 720, in no case would an Obvious Error Panel include a person related to a party to the obvious error in question.

<sup>9</sup> See Amendment No. 1, *supra* note 5.

<sup>10</sup> Brunelle Letter, *supra* note 4.

<sup>11</sup> Rule 11Ac1–1, 17 CFR 240.11 Ac1–1.

<sup>12</sup> Brunelle Letter, *supra* note 4 at 4.

argument that trades done at a price obviously in error must stand, citing rules from other self-regulatory organizations ("SROs")<sup>22</sup> that permit SRO staff to adjust or bust clearly erroneous trades.<sup>23</sup> The ISE also disputed the commenter's assertion that the proposal would allow the ISE to cancel trades on the basis of a formula that the public could not calculate or verify. The ISE stated that its proposal provides specific objective criteria that the Exchange will use to determine if a quotation is erroneous and notes that the ISE spread requirements are described in ISE Rule 803.<sup>24</sup>

Responding to the commenter's arguments regarding the arbitrariness of the theoretical price determination and potential conflicts of interest for the Obvious Error Panel, the ISE states that the proposal specifies exactly the prices to be used in determining whether a trade is an "obvious error," *i.e.*, the quotation in the most liquid market for the option. Where there is no available quote, the ISE has proposed to amend its proposal to state that ISE Market Control, not an Obvious Error Panel comprised solely of market makers, will determine the theoretical price.<sup>25</sup> In addition, the composition of the Obvious Error Panel has been proposed to be altered by Amendment No. 1 so that it would consist of both market maker members and EAMs and it will review ISE staff decisions made under the proposed rule.<sup>26</sup> The ISE notes that this is a limited function in which pricing and trading expertise is needed and that the proposal explicitly prohibits market makers from ruling on any matter involving their own firms.<sup>27</sup> Moreover, the Obvious Error Panel would have no involvement in the initial review of a trade and would only provide a forum for an appeal.<sup>28</sup> The ISE also adds that in any trade involving a customer, the proposal explicitly provides that the ISE would bust any customer trade that is obviously in error unless the customer agrees to adjust the price.<sup>29</sup>

Responding to the commenter's concern of market maker manipulation under the proposal, the ISE commented that the Exchange is charged with the responsibility to engage in active surveillance of its markets and to

discipline members who violate its rules or the federal securities laws.<sup>30</sup> The ISE noted that ISE Market Control would easily detect the commenter's example of manipulation, since the market maker must seek ISE staff involvement to "correct" trades.<sup>31</sup> The ISE also stated that the Exchange posts both its rules and its rule proposals on its Internet web site for anyone to review.<sup>32</sup>

Finally, the ISE challenged the commenter's argument that the proposal would allow market makers to avoid losses and transfer risks to public customers. The ISE stated that the proposal would provide all market participants with notice that trades clearly out-of-line with the market—subject to clear, objective standards—would not stand.<sup>33</sup> The proposal, instead of permitting arbitrageurs to exploit a clear mistake in the market, would reasonably allocate the risk in this type of situation in a manner that protects customers while not unfairly harming market makers who attempt to provide investors with deep and liquid markets.<sup>34</sup>

#### C. Amendment No. 1

Amendment No. 1 would alter the proposal in several aspects. In Amendment No. 1, the ISE revised the composition of the Obvious Error Panel to comprise two Electronic Access Members and two members that are market makers on the Exchange.<sup>35</sup> The ISE also amended the proposed rule change to state that the ISE Market Control, not the Obvious Error Panel, would determine the theoretical price of an option where there are no quotes for comparison purposes.<sup>36</sup> Finally, the ISE clarified its procedures for appealing an ISE staff decision to the Obvious Error Panel.<sup>37</sup> Proposed ISE Rule 720, as amended by Amendment No. 1, follows. Additions are italicized.

\* \* \* \* \*

*Rule 720. Obvious Errors*

\* \* \* \* \*

(b) *Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option is:*

(1) *if the series is traded on at least one other options exchange, the last bid or offer, just prior to the trade, found on the exchange that has the most liquidity in that option as provided in Supplementary Material .02 below; or*

(2) *if there are no quotes for comparison purposes, as determined by designated personnel in the Exchange's market control center ("Market Control").*

\* \* \* \* \*

(d) *Obvious Error Procedure. Designated personnel in the Exchange's market control center ("Market Control") shall administer the application of this Rule as follows:*

(1) *Notification. If a market maker on the Exchange believes that it participated in a transaction that was the result of an Obvious Error, it must notify Market Control within five (5) minutes of the execution. If an Electronic Access Member believes an order it executed on the Exchange was the result of an Obvious Error, it must notify Market Control within twenty (20) minutes of the execution. Absent unusual circumstances, Market Control will not grant relief under this Rule unless notification is made within the prescribed time periods.*

(2) *Adjust or Bust. Market Control will determine whether there was an Obvious Error as defined above. If it is determined that an Obvious Error has occurred, Market Control shall take one of the following actions: (i) where each party to the transaction is a market maker on the Exchange, the execution price of the transaction will be adjusted unless both parties agree to bust the trade within ten (10) minutes of being notified by Market Control of the Obvious Error; or (ii) where at least one party to the Obvious Error is not a market maker on the Exchange, the trade will be busted unless both parties agree to adjust the price of the transaction within thirty (30) minutes of being notified by Market Control of the Obvious Error. Upon taking final action, Market Control shall promptly notify both parties to the trade.*

(e) *Obvious Error Panel.*

(1) *Composition. An Obvious Error Panel will be comprised of representatives from four (4) Members. Two (2) of the representatives must be directly engaged in market making activity and two (2) of the representatives must be employed by an Electronic Access Member.*

(2) *Request for Review. If a party affected by a determination made under this Rule so requests within the time permitted below, the Obvious Error Panel will review decisions made by Market Control under this Rule, including whether an Obvious Error occurred, whether the correct Theoretical Price was used, and whether an adjustment was made at the correct price. A party may also request that the Obvious Error Panel provide relief under this Rule in cases where the party failed to provide the notification required in paragraph(d)(1) and Market Control declined to grant an extension, but unusual circumstances must merit special consideration. A request for review must be made in writing within thirty (30) minutes after a party receives verbal notification of a final determination by Market Control under this Rule, except that if notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time the next trading day to request review. The Obvious Error Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request*

<sup>22</sup> Rule 11890 of the National Association of Securities Dealers, Inc. ("NASD"); Rule 75 of the New York Stock Exchange, Inc. ("NYSE").

<sup>23</sup> ISE Response, *supra* note 19 at 2.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> See Amendment No. 1, *supra* note 5.

<sup>26</sup> *Id.*

<sup>27</sup> ISE Response, *supra* note 19 at 5.

<sup>28</sup> See Amendment No. 1, *supra* note 5.

<sup>29</sup> ISE Response, *supra* note 19 at 4.

<sup>30</sup> ISE Response, *supra* note 19 at 6.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 7.

<sup>34</sup> *Id.*

<sup>35</sup> Amendment No. 1, *supra* note 5.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

is properly made after 3:30 on the day of the transaction or where the request is properly made the next trade day.

(3) *Panel Decision.* The Obvious Error Panel may overturn or modify an action taken by Market Control under this Rule upon agreement by a majority of the Panel representatives. All determinations by the Obvious Error Panel shall constitute final Exchange action on the matter at issue.

#### Supplementary Material to Rule 720

\* \* \* \* \*

.03 The price to which a transaction is adjusted under paragraph (c)(2) above will be as follows: (i) the bid price from the exchange providing the most volume for the option will be used with respect to an erroneous offer price entered on the Exchange, and (ii) the offer price from the exchange providing the most volume for the option will be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price will be determined by Market Control.

\* \* \* \* \*

.05 To qualify as a representative of an Electronic Access Member on an Obvious Error Panel, a person must (i) be employed by a Member whose revenues from options market making activity do not exceed ten percent (10%) of its total revenues; or (ii) have as his or her primary responsibility the handling of Public Customer orders or supervisory responsibility over persons with such responsibility, and not have any responsibilities with respect to market making activities.

.06 The Exchange shall designate at least ten (10) market maker representatives and at least ten (10) Electronic Access representatives to be called upon to serve on Obvious Error Panels as needed. In no case shall an Obvious Error Panel include a person related to a party to the trade in question. To the extent reasonably possible, the Exchange shall call upon the designated representatives to participate on an Obvious Error Panel on an equally frequent basis.

.07 All determinations made by the Exchange, Market Control or an obvious Error Panel under this Rule shall be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

\* \* \* \* \*

#### IV. Discussion

The Commission has reviewed the ISE's proposed rule change and finds, for the reasons set forth below, that the proposal is consistent with the requirements of section 6 of the Act<sup>38</sup> and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,<sup>39</sup> because it promotes just and equitable principles of trade, removes impediments to and perfects the

mechanism of a free and open market and a national market system, and protects investors and the public interest, by providing objective standards for the ISE to use in correcting executions made as a result of an obvious error and procedures by which ISE staff decisions may be appealed.<sup>40</sup>

The Commission believes that the proposal is a reasonable means by which the Exchange might allocate the costs of obvious error trades. The proposal reasonably balances the concern that one market participant may receive a wind-fall at the expense of another market participant who made an obvious error, with the expectation that market participants not be permitted to reconsider poor trading decisions.

In addition, by providing objective standards for resolving disputes involving obvious errors, the proposal should enhance the proper functioning of the markets. When an obvious error has been made and publicly reported, it is important that the ISE correct these obvious errors as quickly as possible using procedures that are clearly outlined. Thus, for any trade involving a customer, the proposal explicitly provides that the ISE will bust any customer trade that is obviously in error unless the customer agrees to adjust the price. The proposal further delineates and appeals process to the Obvious Error Panel and provides a specified time period in which an appeal can be made. The composition of the Obvious Error Panel will provide for the equal representation of both EAMs and market makers. Moreover, if there is no majority consensus among the panel, the decision of ISE Market Control will stand. In addition, where a panel member is an EAM from a firm that engages in both public customer business and market making activity, the ISE expects that the firm will have information barriers in place to ensure against any inappropriate sharing of information between the public customer side and the market making side of the firm.<sup>41</sup>

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. In Amendment No. 1, the ISE proposes to change the composition of the Obvious Error Panel to comprise two

Electronic Access Members and two members that are market makers on the Exchange. The ISE also amended the proposed rule change to state that the ISE Market Control, not the Obvious Error Panel, would determine the theoretical price of an option where there are no quotes for comparison purposes. As the changes to the proposal set forth in Amendment No. 1 are directly responsive to the concerns raised by the commenter, the Commission finds that, consistent with section 19(b)(2) of the Act,<sup>42</sup> good cause exists for approving Amendment No. 1 on an accelerated basis. Accelerated approval of Amendment No. 1 will allow the ISE to expeditiously implement the obvious error procedures set forth in the proposal.

#### V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-ISE-00-19 and should be submitted by June 28, 2001.

#### VI. Conclusion

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>43</sup> that the proposed rule change (SR-ISE-00-19), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>44</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-14332 Filed 6-6-01; 8:45 am]

**BILLING CODE 8010-01-M**

<sup>40</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>41</sup> Telephone conversation between Katherine Simmons, Vice President and Associate General Counsel, ISE, and Susie Cho, Special Counsel, Division, Commission, on May 25, 2001.

<sup>42</sup> 15 U.S.C. 78s(b)(2).

<sup>43</sup> 15 U.S.C. 78s(b)(2).

<sup>44</sup> 17 CFR 200.30-3(a)(12).

<sup>38</sup> 15 U.S.C. 78f.

<sup>39</sup> 15 U.S.C. 78f(b)(5).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44375; File No. SR-NYSE-00-58]

### Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to an Interpretation of Rule 342 ("Offices—Approval, Supervision, and Control")

June 1, 2001.

#### I. Introduction

On December 15, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend interpretations concerning the meaning and administration of NYSE Rule 342 with respect to registered representatives working in small or residence branch offices of Exchange member organizations. The proposed rule change was published for comment in the **Federal Register** on January 22, 2001.<sup>3</sup> No comments were received on the proposal. This order approves the proposal.

#### II. Description of the Proposal

The proposal would amend interpretations of NYSE Rule 342 with respect to the supervision of, and the experience requirements for, registered representatives working in small or residence branch offices of Exchange member organizations. This Interpretation will be published as an Interpretation Memorandum for inclusion in the Exchange's Interpretation Handbook.

NYSE Rule 342 requires that each office, department and business activity be under the supervision and control of the member organization establishing it and of the personnel delegated such authority and responsibility. Additionally, the structure and administration of Exchange rules mandate that all member organization employees, including registered representatives ("RR"), be fully subject to the direct and ongoing supervision, control and discipline of their member organization employers. Further, Exchange Rule 342(c) requires that a member or member organization obtain the Exchange's prior written consent for each office established.

#### NYSE Rule 342.11 and Current Interpretations

NYSE Rule 342.11 provides that an RR may operate out of his or her residence, with Exchange approval, and that if the residence is advertised (through, e.g., business cards or stationery), then the residence constitutes a branch office of the member organization employer. Further, and notwithstanding the above, Interpretation /01 to Rule 342.11 in the NYSE Interpretation Handbook states that if an RR regularly operates from his home during business hours (even on a part-time basis), the member organization employer must register the home as a branch office (a "residence office"). Interpretation /03 to Rule 342.11 currently provides that an RR who will be working from his or her residence must have a minimum of six-months' securities experience before being approved in a residence office.

#### Proposed Amendment to Interpretation /03 to Rule 342.11

The NYSE represents that the six-month securities industry experience requirement for RRs in residence offices has come to be viewed as unnecessary and restrictive in that member organizations are prohibited from permitting the RR from working for two additional months beyond the prescribed four-month training period of NYSE Rule 345. This six-month experience requirement has particularly affected member organizations structured with multiple one-person offices.

The additional training period for inexperienced RRs was appropriate when the interpretation was implemented in the 1970s because of the remote physical location of supervisors. Now, however, with member organizations increasingly employing advanced technology and electronic communications in the supervision and review of RR activities, supervision can be readily performed without being dependent on close physical proximity of the manager to the RR.

Under the proposed amended Interpretation, the six-month experience requirement will be eliminated, thereby allowing the RR who operates from a residence or one-person office to begin working upon completion of the prescribed four-month training period, provided that the member organization develops and implements special supervisory procedures for heightened supervision for the two-month period immediately following completion of prescribed training.

The special supervision will include procedures such as:

- Daily review of all customer account activity;
- Daily review of all correspondence including prior approval of all outgoing correspondence;
- Review of all incoming and outgoing electronic communications, e.g., internet use and electronic mail; and
- On-site inspection by the branch office manager (or qualified designee) responsible for supervision of the residence office in the two months following the prescribed training period.

Member organizations will be required to inform RRs operating from a residence or small one-person office of the special supervision, and to maintain records evidencing the implementation and conduct of the special supervision.

The Exchange believes the amended interpretation will allow these RRs to begin working immediately after completing the prescribed four-month training period (like all other RRs), while also helping to ensure that, through special supervision, member organizations have appropriate supervision and control of RRs operating from a residence and customer accounts serviced by those RRs. Moreover, while the special supervision is required for a limited time, there is the ongoing responsibility of the member organizations, beyond the two-month special supervision period, to have appropriate policies and procedures in place for the supervision and control of all sales and operational activities of each branch office and of all registered employees and the customer accounts they service.

#### Proposed Amendments to Interpretations /01, /02, and a New Interpretation /04 to NYSE Rule 342.15

Generally, each location where member organization employees are engaged in activities on behalf of a member organization must be registered as a branch office (excluding locations on the Exchange Floor where member organizations conduct Floor Business).

A "small" office is a branch with three or less registered representatives, one of whom is designated as "RR-in-charge" (this designation is required only if there is more than one registered representative in the small office). A small office may engage in sales activities but may not conduct operational functions, such as cashing (receipt and disbursement of funds and securities).

Interpretation /02 to NYSE Rule 342.15 currently requires small offices to be under the close supervision and

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Securities Exchange Act Release No. 43834 (January 10, 2001), 66 FR 6721.

control of the member organization's main office or to be supervised by a manager of another office within short travel distance. The manager may be responsible for only two small offices.

The proposed amendments to the Interpretation will require that small offices be controlled and supervised by either the main office or another designated branch office having a qualified (*i.e.*, Series 9 and 10 exam-qualified) Branch Office Manager on the premises. Further, such supervisory arrangements must be made part of the member organization's written plan of supervision. Adoption of the Interpretation will eliminate the current provision under Interpretation /01 to NYSE Rule 342.15 that a manager may be responsible for only two small offices that are in close geographical proximity. Given modern electronic surveillance and monitoring techniques, the Exchange believes this limitation regarding number of offices and geographical location is no longer necessary. New Interpretation /04 to NYSE Rule 342.15 provides that RRs operating from small, one-person branch offices must be subject to the same special supervision prescribed in Interpretation /03 to NYSE Rule 342.11 for residence offices.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>4</sup> Specifically, the Commission finds the proposal is consistent with the section 6(b)(5)<sup>5</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that by amending its Interpretations to NYSE Rule 342, the Exchange will enhance the process for member organization supervision and control of small and residence branch offices, while also permitting RRs to engage in activities upon completion of a prescribed training period.

The proposal would amend Interpretation /03 to NYSE Rule 342.11 to permit RRs in residence offices to begin working after the four-month training period required in NYSE Rule 345, instead of a six-month securities

industry experience requirement in Interpretation /03. The proposal would require member organizations to develop and implement special supervisory procedures for heightened supervision for the two-month period immediately following completion of prescribed training, and to inform RRs operating from a residence or small one-person office of the special supervision, as well as to maintain records evidencing the implementation and conduct of the special supervision. Notwithstanding the proposed special supervision period, member organizations must always have appropriate policies and procedures in place for the supervision and control of all sales and operational activities of each branch office and of all registered employees and the customer accounts they service. The Commission believes that this interpretation establishes a good foundation for Exchange members to develop sufficient procedures for continuous and meaningful supervision of their RRs operating from a residence or small one-person office.

The proposal also would amend Interpretations /01 and /02 of NYSE Rule 342.15 to require that small offices be controlled and supervised by either the main office of another designated branch office having a qualified Branch Office Manager on the premises, and that such supervisory arrangements must be made part of the member organization's written plan of supervision. Further, the proposal would create Interpretation /04 to NYSE Rule 342.15 which would require that RRs operating from small, one-person branch offices must be subject to the same special supervision prescribed in Interpretation /03 to NYSE Rule 342.11 for residence offices. The Commission believes that these proposed changes are consistent with the Act in that they will aid the Exchange in supervising member firms that have small offices and the RRs who work therein without reducing any of the currently established oversight mechanisms.

### IV. Conclusion

*It is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>6</sup> that the proposed rule change (SR-NYSE-00-58) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-14331 Filed 6-6-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44370; File No. SR-OCC-00-10]

### Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to Adjustments of Options Contracts

May 31, 2001.

On October 3, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-OCC-00-10) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 1, 2000.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### I. Description

The purpose of the rule change is to add new language to paragraph (b) of Article VI, Section 11 of OCC's By-Laws to clarify that neither OCC nor OCC's securities committee will be liable for any failure to adjust outstanding option contracts or for any delay in adjusting such contracts when the securities committee does not learn in a timely manner of an event for which it would otherwise have directed an adjustment. While OCC believes that this should be the result under the By-Laws in its present form, OCC believes it is advisable to cover this situation specifically.

Normally, OCC is notified of the occurrence of a section 11(a) adjustment event<sup>3</sup> by its internal stock watch

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 43612, (November 22, 2000), 65 FR 75331.

<sup>3</sup> Section 11(a) of Article VI of OCC's By-Laws states that whenever there is a dividend, stock split, reorganization, recapitalization, or similar event with respect to an underlying security or whenever there is a merger, consolidation, dissolution, or liquidation of the issuer of an underlying security, the number of option contracts, unit of trading, exercise price, and the underlying security of all outstanding options contracts open for trading in that underlying security may be adjusted.

<sup>4</sup> In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78s(b)(2).

department or by the exchanges, which use their research departments to monitor the underlying securities and the issuers of the underlying securities. OCC's economic research department regularly scans Bloomberg, Reuters, and Dow Jones newswires for announcements of adjustment events. When it learns of such an event, OCC contacts the options exchanges, the primary market for the underlying, and the issuer of the underlying to obtain more information about the event and to monitor the event. Likewise, the research departments at the various options exchanges scan a variety of newswires and employ different news alert services to monitor for adjustment events. When the exchanges learn of an adjustment event, they alert OCC and contact the primary market for the underlying security to obtain more information about the event to monitor the event.

Through these procedures, the likelihood that a potential adjustment event will escape notice is minimized. However, the possibility of such an occurrence can never be completely estimated. Accordingly, OCC wishes to make clear that neither it nor its securities committee will have liability for any failure to act or for any delay in acting on events not known to the securities committee.

The rule change also clarifies that adjustment determinations are made in light of circumstances known at the time the determination is made. For example, if the securities committee does not learn of an event for which an adjustment would normally be made until after the ex-date, the fact that options trading and/or exercise activity has taken place in circumstances suggesting that there would be no adjustment could tip the balance of fairness against making an adjustment.

## II. Discussion

For the reasons set forth below, the Commission believes that OCC's rule change is consistent with OCC's obligations under section 17A(b)(3)(F)<sup>4</sup> of the Act which requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The rule change minimizes OCC's exposure to liability for a delay or failure to adjust an outstanding option contract for an event which it would otherwise have made an adjustment where OCC does not learn or does not learn in a timely manner of the event. By explicitly stating that OCC has

no liability in such situations beyond its control, OCC's rule change allows OCC to focus its resources on safeguarding the securities and funds for which OCC is responsible.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-00-10) be and hereby is approved.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-14310 Filed 6-6-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44371; File No. SR-OCC-00-09]

### Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Specific Deposit and Escrow Deposit Programs

May 31, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on, September 8, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested parties and to grant accelerated approval.<sup>1</sup>

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change adds a provision to OCC's rules to describe specifically how OCC would handle a closing purchase transaction submitted to it in the name of a suspended clearing

member that had been effected to close out or reduce a covered short position. The proposed rule also updates and clarifies OCC's rules that describe how OCC proceeds after suspending a clearing member.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The principal purpose of the proposed rule change is to add a provision to OCC's rules to describe specifically how OCC would handle a closing purchase transaction submitted to it in the name of a suspended clearing member that had been effected to close out or reduce a covered short position. A secondary purpose of the proposed rule change is to update and clarify a few other rules that describe how OCC proceeds after suspending a clearing member. These changes are described under the heading "Other Changes" below.

The rules governing both OCC's escrow deposit program and its specific deposit program permit OCC to have recourse to a deposit if an exercise is assigned to the short position that is covered by the deposit and if the clearing member does not perform on the assignment.<sup>2</sup> Both programs are intended to provide OCC with protection against the risk associated with short positions. The escrow deposit program is intended also to provide the clearing member and the clearing member's correspondent broker, if there is one for a particular customer, with recourse if the clearing

<sup>2</sup> Under OCC's rules, an "escrow deposit" is a deposit made by a clearing member's customer with a bank that has been approved by OCC (referred to as an "escrow bank"), and a "specific deposit" is a deposit made by a clearing member at The Depository Trust Company. When OCC accepts an escrow deposit or a specific deposit, it does so in lieu of requiring the clearing member to deposit margin with OCC, and OCC therefore looks to the deposit to make itself whole if the clearing member fails to perform on an assignment on the short position that is covered by the deposit.

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> A copy of the text of OCC's proposed rule change and the attached exhibit are available at the Commission's Public Reference Section or through OCC.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

member or broker performs on an assignment to the covered short position and the customer fails to make settlement with the clearing member or broker.

OCC has identified an area in which the protection afforded to OCC by the two deposit programs should be strengthened. The weakness relates to closing purchase transactions.<sup>3</sup>

Although OCC's rules permit OCC to have recourse to a specific deposit or an escrow deposit if an exercise is assigned to the covered short position and the clearing member fails to perform on the assignment, the rules do not provide OCC with express recourse to the deposit if the clearing member closes out the covered short position by means of a closing purchase transaction and then fails to pay the premium for the closing purchase transaction. When OCC's deposit programs were originally established, OCC's rules permitted it to reject any transaction for which the purchaser failed to pay the premium. If a clearing member failed to pay the premium for a closing purchase transaction covered by a specific deposit or an escrow deposit, OCC could have rejected the closing purchase transaction and caused the short position to remain on OCC's books until it was assigned in which case OCC could have used the deposit to perform on the assignment or until it expired unassigned. Some years ago, however, OCC amended its rules so that it cannot reject trades for nonpayment of premiums.<sup>4</sup> An unintended result of that amendment was to leave OCC without specific authority in its rules to have recourse to a specific deposit or escrow deposit if a clearing member closed out a covered short position and then defaulted on payment of the premium.

In order to remedy this concern, OCC is adding an Interpretations and Policies .01 to Rule 1105 to provide that if a clearing member fails to make premium settlement for an account on any day on which it is obligated to settle a closing purchase transaction in any series in the account, first, OCC will deem the closing transaction first to have closed out any uncovered short positions in the series and second, if the number of cleared securities involved in the transaction exceeds the number of

uncovered short positions in the account, OCC will deem the transaction to be an opening purchase transaction to the extent of the excess even if there are covered short positions carried in the account. The effect of the interpretation would be to expressly allow OCC to maintain the covered short position on OCC's books until the position is assigned or expires unassigned.<sup>5</sup>

#### Other Changes

1. *Rule 1105.* The proposed change in the first paragraph of Rule 1105 is to make clear that Rule 1105 applies to any pending transaction of a suspended clearing member and not just those affected after the time at which the clearing member was suspended.

2. *Rule 1106.* The changes in Rule 1106(a) are to make non-substantive improvements in the language of the rule and to add a reference to any rule that replaces or supplements Rule 1107. This change conforms Rule 1106(a) to the change in the language following Rule 1807 that is described below.

The changes in Rule 1106(b)(2): (1) Eliminate a reference to Rule 1107(a)(2) (because virtually all equity options are settled through the facilities of a designated clearing corporation and therefore subject to Rule 1107(a)(1)); (2) replace a reference to Rule 1807 with a reference to "a provision of the Rules that is specified in the Rules as replacing or supplementing Rule 1107 with respect to particular classes of options" (because Rule 1107 is currently replaced or supplemented by Rule 1705 for yield-based treasury options and by Rule 2306 for cash-settled foreign currency options as well as by Rule 1807 for index options); and (3) add the word "covered" to clarify the intended meaning of the rule.

3. *Rule 1107 and Rule 1807.* The changes in Rules 1107 and 1807 have closely related purposes. Rule 1107(a)(2)

<sup>5</sup> A parallel concern with closing purchase transactions exists for the escrow deposit program at the "clearing/member broker" level. (As stated in the text, the escrow deposit program is designed to provide protection for clearing members and their correspondent brokers as well as for OCC.) OCC's Rule 613(j) as currently in effect and the form of agreement currently used by OCC with banks that act as escrow depositories ("escrow agreement") do not expressly permit the clearing member or correspondent broker to have recourse to an escrow deposit if the customer fails to pay the premium for a closing purchase transaction to the clearing member or broker. The cure for this "clearing member/broker" level weakness requires an amendment to the form of the escrow agreement as well as an amendment to OCC's rules. OCC is preparing a restated form of escrow agreement that will address this concern as well as will make a number of other changes in the form of escrow agreement. OCC intends to file that amended form, together with amendments to Rule 613(j), in the near future.

is amended to delete language currently in that rule that seems to address the closeout of assigned covered index option contracts. This language has no effect because Rule 1807 expressly replaces Rule 1107(a) with respect to index options. The explanatory sentence following Rule 1807 that currently states, "Rule 1807 supplements Rule 1104 and replaces Rule 1107," will be amended to state, "Rule 1807 supplements Rule 1104 and Rule 1107(b) and replaces Rule 1107(a) and (c)." This change is to reflect that Rule 1107(b) is intended to apply to the close-out of assigned covered index option contracts. (Rule 1107(b) authorizes OCC to allocate an assignment if OCC cannot determine promptly upon the suspension of a clearing member whether the clearing member allocated the assignment to a short position for which a specific deposit or an escrow deposit has been made. This concept is relevant for covered index option contracts.) New paragraph (b) to Rule 1807(b) incorporates sentences parallel to the final two sentences of Rule 1107(a)(2). These sentences are simpler than their Rule 1107(a)(2) counterparts because index options are cash-settled and the "delivery" concept is not relevant to index options.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to OCC because it enhances OCC's ability to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

#### *(B) Self-Regulatory Organization's Statement on Burden on Competition*

OCC does not believe that the proposed rule change would impose any burden on competition.

#### *(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is

<sup>3</sup> A "closing purchase transaction" is a transaction in which the purchaser's intention is to eliminate ("close out") or reduce a short position in the series of options involved in the transaction.

<sup>4</sup> Securities Exchange Act Release No. 29853 (October 23, 1991), 56 FR 55968 [File No. SR-OCC-90-05] (approving OCC's proposed rule change relating to the earlier guarantee of options transactions).

responsible.<sup>6</sup> For the reasons set forth below, the Commission believes that OCC's proposed rule change is consistent with OCC's obligations under the Act.

OCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit OCC to immediately give OCC the benefit of protection against such failures to settle. Accordingly, the Commission finds that the rule change is consistent with OCC's obligations to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible because it should provide OCC with strengthened protection against the risk of a suspended member's failure to settle by providing OCC with express recourse to the suspended member's deposits.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR-OCC-00-09 and should be submitted by June 28, 2001.

#### V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-OCC-00-09) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-14311 Filed 6-6-01; 8:45 am]

**BILLING CODE 8010-01-M**

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 44372; File No. SR-Phlx-2001-59]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Dealing Directly With Specialist and Registered Options Traders in Foreign Currency Options

May 32, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 30, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt new Phlx Rule 1089 entitled "Dealing Directly With Specialist and Registered Options Trader in Foreign Currency Options" on a one-year pilot basis. The pilot will expire on May 31, 2002.<sup>3</sup> Proposed new language is in *italics*.

\* \* \* \* \*

#### *Dealing Directly With Specialist and Registered Option Trader in Foreign Currency Options*

*Rule 1089.(a) Applicability. The provisions in this Rule are applicable to options on*

<sup>7</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Telephone conversation between Edith Hallahan, First Vice President & Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on May 31, 2001.

foreign currencies and supercede any Rules of general applicability to trading of options which are or may be construed as contrary to or inconsistent with these Rules.

(b) *Non-Customized Foreign Currency Options.* In the event that there is no floor broker present to accept and execute orders for non-customized foreign currency options on the trading floor for such options:

(1) *Market and Limit Orders.* Foreign currency options participants and foreign currency options participant organizations may transmit market and limit orders for such options directly to the specialist by telephone or other means. In addition, any person who is not a foreign currency options participant or participant organization may, pursuant to authorization of a foreign currency options participant organization and subject to the consent of the specialist, transmit limit orders, marketable limit orders and market orders for such options directly to the specialist by telephone or other means.

(2) *Complex Orders.* Foreign currency options participants and foreign currency options participant organizations may contact the specialist directly by telephone to negotiate the total debit or credit for transacting a complex order, provided that the specialist is responsible for complying with Rules 1033 and 1066 in setting the price of the individual option legs of the order. In addition, a person who is not a foreign currency options participant or participant organization may, (provided that such person's account is not with the specialist's firm) pursuant to authorization of a foreign currency options participant organization and subject to the consent of the specialist, contact the specialist directly by telephone to negotiate the total debit or credit for transacting a complex order, provided that the specialist is responsible for complying with Rules 1033 and 1066 in setting the price of the individual option legs of the order. Complex orders include orders consisting of two or more option series of non-customized foreign currency options such as spreads, straddles and combinations. In no event shall the specialist accept complex orders for representation or placement onto the specialist's book.

(c) *Customized Foreign Currency Options.* In the event that there is no floor broker present to accept and execute orders for customized foreign currency options on the trading floor for such options; foreign currency options participants and foreign currency options participant organizations may submit a request for quote ("RFQ") under Rule 1069 for a customized foreign currency option directly to an ROT on the floor by telephone or other means, and, if applicable, negotiate a transaction with an ROT. In addition, a person who is not a foreign currency options participant or participant organization may, pursuant to authorization of a foreign currency options participant organization and subject to the consent of the ROT, submit an RFQ under Rule 1069 for a customized foreign currency option directly to an ROT on the floor by telephone or other means, and if applicable, negotiate a transaction with an ROT.

\* \* \* \* \*

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

#### 1. Purpose

The purpose of the proposed rule is to establish special procedures for transmitting orders and requests for quotes for non-customized and customized foreign currency options to the floor, and for executing transactions in such options on the floor, when no floor broker is present. The Exchange is proposing the rules as an alternative mechanism for handling orders and executing transactions in foreign currency options in the event that there are no floor brokers present on the trading floor for such options.

Since the late 1980s, the number of foreign currency options participants and firms clearing foreign currency options has steadily declined as the market has increasingly shifted to over-the-counter trading. Currently, the Exchange has one foreign currency options participant registered as the specialist unit in all non-customized foreign currency options listed on the Exchange. Similarly, there is also one foreign currency options participant organization acting as floor broker to accept and handle foreign currency options orders. The use of floor brokers is currently the only mechanism for customer trading interest to be communicated on the foreign currency options floor. In the event that, for whatever reason, there is no longer any qualified floor broker on the foreign currency options floor to handle and execute customers orders, it would effectively make it impossible for the foreign currency option floor to continue to operate. Therefore, the Exchange is adopting an alternative mechanism for communicating trading interest to the specialist or Registered Options Trader ("ROT") (for customized foreign currency options).

Proposed Phlx Rule 1089 would apply to trading of non-customized and customized foreign currency options and would supercede any contrary or inconsistent Exchange rules applicable to options trading. The Exchange represents that the distinction between non-customized and customized options is relevant because they are traded differently under Phlx rules. Whereas the Phlx trading rules for non-customized foreign currency options provide for a traditional specialist model, the rules for the customized options do not, principally because their highly tailored nature is not conducive to continuous quoting of markets. Instead, Phlx rules contemplate trading of customized options by floor brokers (on behalf of customers) and registered options traders ("ROTs") as market makers trading for their own account through Request-for-Quote ("RFQ") procedures.<sup>4</sup>

Proposed Phlx Rules 1089(b) and 1089(c) would set out the terms for submitting orders and RFQs to the floor and executing trades on the floor for non-customized options (including complex orders) and customized options, respectively. The proposal would permit foreign currency options participants and foreign currency options participant organizations, and, subject to certain conditions,<sup>5</sup> persons who are not such participants or participant organizations to: (1) Place market and limit orders for non-customized foreign currency options directly with the registered specialist for such options by telephone or other means;<sup>6</sup> (2) negotiate and execute complex orders consisting of combinations of two or more series of non-customized foreign currency options at a total debit or credit directly with the specialist over the telephone;<sup>7</sup>

<sup>4</sup> Customized foreign currency options are traded pursuant to Rule 1069. Securities Exchange Act Release No. 34925 (November 1, 1994), 59 FR 55720 (November 8, 1994) (approving SR-Phlx-94-18).

<sup>5</sup> Any person who is not a foreign currency options participant or participant organization must be authorized by a foreign currency options participant organization to engage in the enumerated activities because the foreign currency options participant organization is responsible for such person's activities on the Exchange. Similar to the Nasdaq market, the specialist or ROT, as applicable, is entitled to know with whom they are dealing on the telephone to assure themselves of proper authorization by a foreign currency options participant and appropriate financial responsibility by a clearing firm on any trade executed. Usually, such authorization includes written "give-up agreements" or other similar documentation, in addition to general validation of the individual on the telephone, whether at first dealing or routinely.

<sup>6</sup> See Proposed Phlx Rule 1089(b). The Exchange notes that in addition to accepting market or limit orders, the specialist may negotiate and execute such orders as well. See *infra* note 11.

<sup>7</sup> See Proposed Phlx Rule 1089(b).

and (3) submit RFQs under Phlx Rule 1069 directly with an ROT and, if applicable, to negotiate a transaction with an ROT.<sup>8</sup>

As explained above, the new rule will supercede any contrary or inconsistent Exchange rules that would otherwise apply, on the narrow terms proposed.<sup>9</sup> Most notably, the Exchange intends for the proposal to:

- Provide a limited exemption from the provisions of Phlx Rule 104 to permit a specialist or ROT to negotiate and execute trades with non-members over the phone, including for complex orders and customized foreign currency options;
- Clarify that Phlx Options Floor Procedure Advice A-2 (as last amended September 26, 1994)<sup>10</sup> does not prohibit a specialist negotiating the terms of complex orders in non-customized foreign currency options directly with order sending firms or customers;<sup>11</sup> and

<sup>8</sup> See Proposed Phlx Rule 1089(c).

<sup>9</sup> The provisions applicable to recordkeeping and timestamping of orders and trades continue to apply. See *e.g.*, Rule 17a-3 under the Act.

<sup>10</sup> Securities Exchange Act Release No. 34721 (September 26, 1994), 59 FR 50310 (October 23, 1994) (approving SR-Phlx-92-03).

<sup>11</sup> The Exchange believes that the proposal is not inconsistent with Advice A-2 because the foreign currency options specialist is not accepting a complex order for representation or placement on the book. The proposal allows an order-sending firm or customer who telephones a specialist to directly negotiate with the specialist as contra-side the total debit or credit for transacting a complex order; but the order sending firm or customer is not giving the order to the specialist for representation or for placement on the book. Rather, at the conclusion of the negotiation there will be a completed transaction based upon that total debit or credit. As such, the Exchange does not believe that the proposal would allow the specialist to accept discretionary orders, which could theoretically raise a question under Section 11(a) of the Act. Section 11(a)(1), among other things, prohibits a member of an exchange from effecting on the exchange any transaction for an account over which the member exercises "investment discretion." The legislative history of Section 11(a) indicates that the discretionary account prohibition in that Section was intended in large part to address potential abuses arising out of the combination of brokerage and money management. See Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978). "Investment discretion" is defined in Section 3(a)(35) of the Act to include a relationship where a person "directly or indirectly (A) is authorized to determine what securities \* \* \* shall be purchased or sold by or for the account, (B) makes decisions as to what securities \* \* \* shall be purchased or sold by or for the account \* \* \* or (C) otherwise exercises such influence with respect to the purchase and sale of securities \* \* \* by or for the account as the Commission, by rule, determines \* \* \* should be subject to the operation of the [Act] \* \* \* ." The Commission has not adopted any rules under Subsection C. Given the fact that the specialist has no discretion in executing the legs of a complex order to affect either the price, timing or individual options purchased or sold, the Exchange does not believe that the specialist has the type of investment discretion that was intended to be

• Expand the scope of Phlx Circular No. 86-09 to permit persons who are not foreign currency options participants and participant organizations to have direct telephone access to foreign currency options specialists and ROTs as well as floor brokers.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act,<sup>12</sup> in general, and with section 6(b)(5)<sup>13</sup> of the Act in particular, in that it is designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and protect investors and the public interest.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate or unnecessary burden on competition.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All

covered by Section 11(a). Similarly the Exchange believes that the proposal is consistent with Section 11(b) of the Act because the specialist is only effecting on the Exchange as broker transactions upon "market or limited price" orders.

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

submissions should refer to File No. SR-Phlx-2001-59 and should be submitted by June 28, 2001.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change on a one-year pilot basis is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.<sup>14</sup> In approving the proposed rule change, the Commission has considered the implications of the proposed rules under sections 11(a) and 11(b) of the Act.<sup>15</sup> The Commission finds that the proposed rule change is consistent with section 11(a)<sup>16</sup> because the foreign currency options specialist is not accepting a complex order for representation or placement on the specialist book. The specialist will have no discretion in executing the legs of a complex order to affect either the price, timing or individual options purchased or sold. Therefore, the Commission believes that under the proposed rules the specialist will not have the type of investment discretion prohibited by section 11(a). The Commission also finds that the proposed rule change is consistent with section 11(b)<sup>17</sup> because the specialist will not accept complex orders from customers of the firm with which it is associated.<sup>18</sup> The Commission notes that Phlx's rules, including the proposed rule change, permit the specialist to deal directly with customers. In this regard, the Commission notes that section 15(b)(8) of the Act<sup>19</sup> states that it is unlawful for "any registered broker or dealer to effect any transaction in, or induce or attempt to induce the purchase or sale of any security \* \* \* unless such broker or

<sup>14</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 15 U.S.C. 78k(a) and (b).

<sup>16</sup> Section 11(a) of the Act states that it is "unlawful for any member of a national securities exchange to effect any transaction on such exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion[.]"

<sup>17</sup> Section 11(b) of the Act states that it is "unlawful for a specialist permitted to act as a broker and dealer to effect on the exchange as broker any transaction except upon a market or limited price order."

<sup>18</sup> The Commission notes that the Exchange has represented that, currently, the specialist firm in foreign currency options does not carry customer accounts. Telephone conversation between Edith Hallahan, Vice President & Deputy General Counsel, Phlx, and Florence Harmon, Senior Special Counsel, Division, Commission on May 30, 2001.

<sup>19</sup> 15 U.S.C. 78o(b)(8).

dealer is a member of a securities association registered pursuant to section 15A of this title or effects transactions in securities solely on a national securities exchange of which it is a member."

Finally, the Commission believes that the proposed rule change is consistent with section 6(b) of the Act<sup>20</sup> in general, and furthers the objectives of section 6(b)(5) of the Act<sup>21</sup> in particular in that it is designated to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Specifically, the Commission believes that the proposed rule change will ensure that in the event there is no longer a qualified floor broker on the foreign currency options floor, there are provisions in place that will allow the floor to continue to operate, thus facilitating transactions in securities. Moreover, the Commission believes that the proposed rule change will protect investors from potential conflicts of interest on the part of the specialist in that the specialist will not have the type of investment discretion prohibited by section 11(a)<sup>22</sup> and will not act as a broker in violation of section 11(b).<sup>23</sup>

The Exchange requests accelerated approval pursuant to Rule 19(b)(2)(B).<sup>24</sup> The Exchange has requested accelerated approval because in the event there is no longer a qualified floor broker on the foreign currency options floor, rules will be in place to allow the floor to continue to operate, thus facilitating transactions in securities. The Commission believes that it is appropriate to approve the proposed rules on an accelerated basis, to ensure that persons wishing to trade on the Exchange's foreign currency options floor can communicate directly with the specialist to communicate trading interest in the event there are no floor brokers, but only a specialist, on the floor. Therefore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

*It is therefore ordered*, pursuant to section 19(b)(2)<sup>25</sup> of the Act that the proposed rule change (SR-Phlx-2001-59) be, and hereby is, approved.

<sup>20</sup> 15 U.S.C. 78f(b).

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78k(a).

<sup>23</sup> 15 U.S.C. 78k(b).

<sup>24</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>25</sup> 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-14312 Filed 6-6-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44373; File No. SR-Phlx-2001-19]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Institute an Antitrust Compliance Policy

May 31, 2001.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on March 5, 2001, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Phlx has proposed to adopt an Antitrust Compliance Policy ("Compliance Policy"). The Compliance Policy, which applies to Exchange governors, committee members, employees, members, and member organizations ("Covered Persons"), is designed to highlight certain activities known to raise antitrust and competition-related concerns, provide general guidance in these areas, and suggest when Covered Persons may want to consult with the Phlx Antitrust Compliance Officer or his designated staff.

The Compliance Policy states that it is the policy of the Exchange to comply with the antitrust laws and the settlements that Phlx and the other options exchanges entered into on September 11, 2000, with the Department of Justice ("DOJ") and the Commission.<sup>3</sup> The Compliance Policy

also discusses the consequences of non-compliance with the antitrust laws, the settlements, and certain Exchange rules.

The Compliance Policy discusses certain types of conduct that may raise behavioral issues. For example, the Compliance Policy states that certain agreements with other exchanges are prohibited by the settlements, various exchange rules, and/or codes of conduct: those indicating that any option class will be traded on only one exchange; those indicating that trading of option classes will be allocated among exchanges; and those requiring, preventing, or limiting the listing, delisting, or trading of any options class. The Compliance Policy states that engaging in harassment or other improper behavior connected with listing decisions or competitive-related practices is prohibited. It states also that listing and delisting decisions must be made in accordance with Exchange rules, policies, and procedures.

In addition, the Compliance Policy states that harassment, retaliation, or intimidation relating to listing decisions, prices, spreads, or trade allocation should be reported to the Antitrust Compliance Officer or his designated staff.

The text of the proposed rule change is available at the principal office of the Exchange and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange has long insisted that Covered Persons observe the highest standards of business ethics and fair dealing and has therefore filed with the Commission its Employee Code of Conduct and Code of Conduct of Board

Members and Committed Members.<sup>4</sup> In an effort to reinforce such standards, in particular with regard to antitrust and competition-related behavior, the Exchange is now proposing to file the Compliance Policy with the Commission.

The purpose of the Compliance Policy is to provide general guidance regarding antitrust and compliance-related issues, highlights activities known to raise concerns, and provide suggestions when to consult the Antitrust Compliance Officers or his designated staff. In addition, the compliance policy specifically deals with issues raised in the DOJ and Commission settlement orders.

The Exchange believes that, by filing the Compliance Policy with the Commission, it would be uniformly applicable to, and violations enforceable against, all Covered Persons: Exchange governors, committee members, employees, members, and member organizations.

###### 2. Statutory Basis

Phlx believes the proposed rule change is consistent with section 6 of the Act<sup>5</sup> in general, and furthers the objectives of section 6(b)(5)<sup>6</sup> in particular, in that it is designed to prevent unsuitable actions by Exchange governors, committee members, employees, members, and member organizations regarding antitrust law and competition-related behavior.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

Phlx does not believe that the proposed rule change would impose any burden on competition.

##### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

<sup>4</sup> See Securities Exchange Act Release No. 44057 (March 9, 2001), 66 FR 15312 (March 16, 2001) (notice and accelerated partial approval of SR-Phlx-01-03).

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(5).

<sup>26</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See *United States v. American Stock Exchange LLC*, Civil Action No. 00-CV-02174 (EGS) (D.C.

Cir., December 6, 2000); *In re Certain Activities of Options Exchanges*, Securities Exchange Act Release No. 43268 (September 11, 2000).

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-2001-19 and should be submitted by June 28, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 01-14313 Filed 6-6-01; 8:45 am]

BILLING CODE 8010-01-M

#### SMALL BUSINESS ADMINISTRATION

##### [Declaration of Disaster #3337]

##### State of Iowa; Amendment #3

In accordance with a notice received from the Federal Emergency Management Agency, dated May 29, 2001, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on April 8, 2001 and continuing through May 29, 2001. All other information remains the same, i.e., the deadline for filing applications for physical damage is July 1, 2001 and for economic injury the deadline is February 1, 2002.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 2001.

**James E. Rivera,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 01-14303 Filed 6-6-01; 8:45 am]

BILLING CODE 8025-01-P

#### DEPARTMENT OF STATE

##### [Public Notice 3690]

#### Determination Regarding Export-Import Bank Financing of Certain Defense Articles and Services for the Government of Venezuela

Pursuant to section 2(b)(6) of the Export-Import Bank Act of 1945, as amended, and Executive Order 11958 of January 18, 1977, as amended by Executive Order 12680 of July 5, 1989, I hereby determine that:

(1) The defense articles and services for which the Government of Venezuela has requested Export-Import Bank (Ex-Im) financing, reverse-osmosis water purification equipment for the modification of four armed Light Surface Transport (LST) vessels as part of an ongoing planned modification and upgrading of the vessels, are being sold primarily for anti-narcotics purposes.

(2) The sale of such defense articles and services is in the national interest of the United States.

(3) The requirements for a determination that the Government of Venezuela has complied with all U.S.-imposed end-use restrictions on the use of defense articles and services previously financed under the Act is inapplicable at this time because the three previous transactions have not been completed. Specifically, although Ex-Im has approved financing in connection with the refurbishment of 12 OV-10 aircraft, the refurbishment has not been completed; two 150-foot logistic support vessels sold with Ex-Im financing have not been delivered; and parts financed by Ex-Im for the modification of four frigates have not been installed.

(4) The requirement for a determination that the Government of Venezuela has not used defense articles or services previously provided under the Act to engage in a consistent pattern of gross violations of internationally recognized human rights is also inapplicable at this time. As stated above, Ex-Im financing has been used in connection with three defense articles or services transactions involving the Government of Venezuela. One transaction involves the refurbishment

of aircraft, the second the delivery of two vessels, and the third the modification of four vessels, none of which has been completed.

This determination shall be reported to Congress and shall be published in the **Federal Register**.

Dated: April 24, 2001.

**Colin L. Powell,**

*Secretary of State.*

[FR Doc. 01-14387 Filed 6-6-01; 8:45 am]

BILLING CODE 4710-07-U

#### TENNESSEE VALLEY AUTHORITY

##### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1531).

**TIME AND DATE:** 2 p.m. (CDT), June 11, 2001.

**PLACE:** Von Braun Civic Center, 700 Monroe Street, Huntsville, Alabama.

**STATUS:** Open.

##### Agenda

Approval of minutes of meeting held on May 17, 2001.

##### New Business

##### B—Purchase Award

B1. Supplement to contract with Swift Industrial Power for batteries, racks, chargers, and accessories for Transmission/Power Supply and River System Operations and Environment.

B2. Supplement to Contract No. 00XFA-252730-0010 with Staples for office supplies/equipment and forms management.

B3. Supplement to Contract No. 99B4P-24442 with Meta-Power, Inc., for business process redesign consulting services.

##### C—Energy

C1. Supplement to Contract No. 99P5K-244546-002 with Thompson Machinery Company for equipment rental, repair parts, and repairs.

C2. Contract with Enron North America Corp. to design, manufacture, and deliver NOxTech equipment for designated TVA fossil plants.

C3. Supplement to Contract No. 00PYN-258769 with FLS Miljo to design, fabricate, and supply precipitator power supply transformer-rectifier sets, controls, and supervisory systems for Paradise Fossil Plant.

C4. Supplement to Contract No. 96X7C-108889-000 with ABB Automation, Inc., for genuine ABB automation spare parts, supplement equipment, engineered and assembled systems for system upgrades, services, and training for any TVA fossil plant.

<sup>7</sup> 17 CFR 200.30-3(a)(12)

**E—Real Property Transactions**

E1. Amendment to the Pickwick Reservoir Land Management Plan to change the allocated uses for a 16-acre portion of Tract No. XPR-460RE from management, navigation, and minor commercial landing to commercial recreation and forest management and sale of a 40-year commercial recreation easement affecting approximately 31 acres on Pickwick Reservoir in Tishomingo County, Mississippi.

E2. Deed modification of certain restrictions affecting approximately 0.09 acre of former TVA land on Chickamauga Reservoir, a portion of Tract No. XCR-92, in Hamilton County, Tennessee.

E3. Grant of a permanent easement for a gas pipeline to Duke Energy Gas Services Corporation, affecting approximately 4.1 acres, and temporary construction and road easements affecting approximately 0.2 acre of Cherokee Reservoir in Hawkins County, Tennessee, Tract No. XCK-584P.

E4. Grant of permanent easement to Duke Energy Marshall County, LLC, for a road, natural gas pipeline, and waterline, affecting approximately 0.70 acre of TVA land at the Marshall County, Kentucky, 500-kV Substation site in Marshall County, Kentucky, Tract No. XMAKSS-1E, Parcels 1 and 2.

**Information Items**

1. Supplement to Contract No. 95BQC-129888-001 with Wachovia Leasing for aircraft lease.

2. Implementation of the results of negotiations with the Engineering Association, Inc., over compensation for TVA annual and hourly employees.

**FOR MORE INFORMATION CONTACT:** Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999. People who plan to attend the meeting and have special needs should call (865) 632-6000.

Dated: June 4, 2001.

**Maureen H. Dunn,**

*General Counsel and Secretary.*

[FR Doc. 01-14446 Filed 6-5-01; 10:30 am]

**BILLING CODE 8120-08-M**

**DEPARTMENT OF TRANSPORTATION****Coast Guard**

[USCG-2001-9763]

**Towing Safety Advisory Committee; Charter Renewal**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of charter renewal.

**SUMMARY:** The Secretary of Transportation has renewed the charter for the Towing Safety Advisory Committee (TSAC) for a period of two years from May 19, 2001, until May 19, 2003. TSAC is a federal advisory committee constituted under 5 U.S.C. App. 2. It advises the Secretary of Transportation on matters relating to shallow-draft inland and coastal waterway navigation and towing safety.

This notice and the charter are available on the Internet at <http://dms.dot.gov>. The charter is also available on TSAC's Internet web page at <http://www.uscg.mil/hq/g-m/advisory/index.htm>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gerald P. Miente, Assistant Executive Director, Commandant (G-MSO-1), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001, telephone 202-267-0229, fax 202-267-4570.

Dated: May 30, 2001.

**Howard L. Hime,**

*Acting Director of Standards, Marine Safety and Environmental Protection.*

[FR Doc. 01-14386 Filed 6-6-01; 8:45 am]

**BILLING CODE 4910-15-U**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Federal Railroad Administration****Environmental Impact Statement: New York, NY**

**AGENCIES:** Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA and FRA are issuing this Notice to advise the public that an environmental impact statement will be prepared for a cross harbor freight improvement proposal in Kings (Brooklyn) and Richmond (Staten Island) Counties in New York and Hudson County (Jersey City) in New Jersey.

**FOR FURTHER INFORMATION CONTACT:** Ms. Alice Cheng, Director, Intermodal Planning, New York City Economic Development Corporation, 110 William Street-6th Floor, New York, NY 10038, Telephone (212) 619-5000, email "acheng@nyedc.com"; or Richard E. Backlund, Intermodal Transportation Coordinator, Federal Highway Administration, New York Division, One Bowling Green, Room 428, New York, NY 10004-1415, Telephone (212) 668-2205, email "Richard.Backlund@fhwa.dot.gov"; or Michael Saunders, Northeast Corridor

Program Manager, Federal Railroad Administration, 628-2 Hebron Avenue, Suite 303, Glastonbury, Connecticut 06033-5007, Telephone (860) 659-6714, email

"Michael.Saunders@fhwa.dot.gov".

**SUPPLEMENTARY INFORMATION:** The FHWA and FRA, in cooperation with the New York City Economic Development Corporation (NYCEDC), will prepare an environmental impact statement (EIS) on a proposal to improve rail freight operations across upper New York harbor between the States of New Jersey and New York for Jersey City in New Jersey and Brooklyn and Staten Island in New York. The proposed improvements could involve the implementation of additional rail float services in the New York harbor, no action, or the construction of a freight tunnel from the Travis branch of the Staten Island Railroad in northern Staten Island, New York, or the Greenville float yard in Jersey City, New Jersey, to the Bay Ridge rail line in Brooklyn, New York. The FHWA, FRA, and NYCEDC are participating with the U.S. Environmental Protection Agency in an environmental streamlining pilot for this EIS.

Specific alternatives under consideration include (1) taking no action; (2) an enhanced New York harbor railcar float system from the Greenville rail yard, Jersey City, New Jersey to the Bay Ridge rail line in Brooklyn, New York; (3) a freight rail tunnel from the Travis branch of the Staten Island Railroad, Staten Island, New York to the Bay Ridge rail line in Brooklyn, New York; (4) a freight rail tunnel from the Greenville rail yard, Jersey City, New Jersey to the Bay Ridge rail line, Brooklyn, New York.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, elected officials, community organizations, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings, to be advertised in the local media, will be held in Brooklyn, Staten Island and Manhattan in New York and in Hudson County, New Jersey regarding this proposal.

The public will be invited to participate in the scoping process, review the draft EIS, and provide input at public meetings. Release of the draft EIS for public comment and the public meetings will be announced as those dates are established. It is anticipated that the EIS study process will take approximately two years.

Comments or questions concerning this Notice of Intent and the EIS should be directed to the FHWA, FRA or NYCEDC at the addresses noted above.

**Authority:** 23 U.S.C. 315; 23 CFR 771.123.

Issued on: May 24, 2001.

**Richard E. Backlund,**

*Intermodal Transportation Coordinator,  
Federal Highway Administration, New York,  
New York.*

[FR Doc. 01-14374 Filed 6-6-01; 8:45 am]

**BILLING CODE 4910-22-M**

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. RSPA-2001-8761 (Notice No. 01-07)]

#### Information Collection Activities

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request renewal from the Office of Management and Budget (OMB).

**DATES:** Interested persons are invited to submit comments on or before August 6, 2001.

**ADDRESSES:** Submit written comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh St., SW., Washington, DC 20590-0001. You must identify the docket number, RSPA-01-XXXX (Notice No. 01-07) and the appropriate Office of Management and Budget (OMB) Control Number(s) at the beginning of your comments and submit two copies. If you wish to receive confirmation of receipt of your comments, include a self-addressed stamped postcard. You may also submit comments by e-mail by accessing the Dockets Management System website at <http://dms.dot.gov>. Click on "Help & Information" to obtain instructions for filing the document electronically.

The Dockets Management System is located on the Plaza Level of the Nassif Building at the U.S. DOT at the above address. You can view public dockets between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. You can also view comments on-line at <http://dms.dot.gov>.

Requests for a copy of an information collection should be directed to Deborah

Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

#### FOR FURTHER INFORMATION CONTACT:

Deborah Boothe, Office of Hazardous Materials Standards (DHM-10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590-0001, Telephone (202) 366-8553.

**SUPPLEMENTARY INFORMATION:** Section 1320.8 (d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for renewal and extension. These collections are contained in 49 CFR Parts 110 and 130 and the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180. RSPA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collections:  
**Title:** Testing, Inspection and Marking Requirements for Cylinders.

**OMB Control Number:** 2137-0022.

**Summary:** Requirements in § 173.34 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following conduct of tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. These

requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use.

Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

**Affected Public:** Fillers, owners, users and retesters of reusable cylinders.

**Annual Reporting and Recordkeeping:**

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours:

168,431.

Frequency: On occasion.

**Title:** Hazardous Materials Incident Reports.

**OMB Control Number:** 2137-0039.

**Summary:** This collection is applicable upon occurrence of incidents as prescribed in §§ 171.15 and 171.16. Basically, a Hazardous Materials Incident Report, DOT Form F5800.1, must be completed by a carrier of hazardous materials when a hazardous material transportation incident occurs, such as a release of materials, serious accident, evacuation or highway shutdown. Serious incidents meeting criteria in § 171.15 also require a telephonic report by the carrier. This information collection enhances the Department's ability to evaluate the effectiveness of its regulatory program, determine the need for regulatory changes, and address emerging hazardous materials transportation safety issues. The requirements apply to all interstate and intrastate carriers engaged in the transportation of hazardous materials by rail, air, water, and highway.

**Affected Public:** Carriers of hazardous materials.

**Annual Reporting and Recordkeeping:**

Number of Respondents: 825.

Total Annual Responses: 20,600.

Total Annual Burden Hours:

30,942.

Frequency of collection: On occasion.

**Title:** Flammable Cryogenic Liquids.

**OMB Control Number:** 2137-0542.

**Summary:** Provisions in § 177.818 require the carriage on a motor vehicle of written procedures for venting flammable cryogenic liquids and for responding to emergencies. Paragraph (h) of § 177.840 specifies certain safety procedures and documentation requirements for drivers of these motor vehicles. These requirements are intended to ensure a high level of safety when transporting flammable cryogenics due to their extreme

flammability and high compression ratio when in a liquid state.

*Affected Public:* Carriers of cryogenic materials.

*Annual Reporting and Recordkeeping:*

Total Respondents: 65.

Total Annual Responses: 18,200.

Total Annual Burden Hours: 1,213.

Frequency of collection: On

occasion.

*Title:* Testing Requirements for Non-bulk Packaging.

*OMB Control Number:* 2137-0572.

*Summary:* Detailed packaging manufacturing specifications have been replaced by a series of performance tests that a non-bulk packaging must be capable of passing before it is authorized to be used for transporting hazardous materials. The HMR require proof that packagings meet these testing requirements. Manufacturers must retain records of design qualification tests and periodic retests. Manufacturers must notify, in writing, persons to whom packagings are transferred of any specification requirements that have not been met at the time of transfer. Subsequent distributors, as well as manufacturers must provide written notification. Performance-oriented packaging standards allow manufacturers and shippers much greater flexibility in selecting more economical packagings.

*Affected Public:* Each non-bulk packaging manufacturer that tests packagings to ensure compliance with the HMR.

*Annual Reporting and Recordkeeping:*

Annual Respondents: 5,000.

Annual Responses: 15,000.

Annual Burden Hours: 30,000.

Frequency of collection: On

occasion.

*Title:* Container Certification Statement.

*OMB Control Number:* 2137-0582.

*Summary:* Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement is intended to ensure an adequate level of safety for transport of explosives aboard vessel and ensure consistency with similar requirements in international standards.

*Affected Public:* Shippers of explosives in freight containers or transport vehicles by vessel.

*Annual Reporting and Recordkeeping:*

Annual Respondents: 650.

Annual Responses: 860,000 HM

Containers & 4400 Explosive Containers.

Annual Burden Hours: 14,409.

Frequency of collection: On occasion.

*Title:* Hazardous Materials Public Sector Training and Planning Grants.

*OMB Control Number:* 2137-0586.

*Summary:* Part 110 of 49 CFR sets forth the procedures for reimbursable grants for public sector planning and training in support of the emergency planning and training efforts of States, Indian tribes and local communities to deal with hazardous materials emergencies, particularly those involving transportation. Sections in this part address information collection and recordkeeping with regard to applying for grants, monitoring expenditures, reporting and requesting modifications.

*Affected Public:* State and local governments, Indian tribes.

*Annual Reporting and Recordkeeping:*

Annual Respondents: 66.

Annual Responses: 1.

Annual Burden Hours: 4,082.

Frequency of collection: On

occasion.

*Title:* Response Plans for Shipments of Oil.

*OMB Control Number:* 2137-0591.

*Summary:* In recent years several major oil discharges damaged the marine environment of the United States. Under authority of the Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990, RSPA issued regulations in 49 CFR Part 130 that require preparation of written spill response plans.

*Affected Public:* Carriers that transport oil in bulk, by motor vehicle or rail.

*Annual Reporting and Recordkeeping:*

Annual Respondents: 8,000.

Annual Responses: 8,000.

Annual Burden Hours: 10,560.

Frequency of collection: On

occasion.

*Title:* Cargo Tank Motor Vehicles in Liquefied Compressed Gas Service.

*OMB Control Number:* 2137-0595.

*Summary:* These information collection and recordkeeping requirements pertain to the manufacture, certification, inspection, repair, maintenance, and operation of DOT specification MC 330, MC 331, and certain nonspecification cargo tank motor vehicles used to transport liquefied compressed gases. These information collection and recordkeeping requirements are to ensure that certain cargo tank motor vehicles used to transport liquefied compressed gases are operated safely and to minimize the potential for catastrophic releases during unloading and loading operations. They include:

(1) Requirements for operators of cargo tank motor vehicles in liquefied compressed gas service to develop operating procedures applicable to unloading operations and carry them on each vehicle; (2) inspection, maintenance, marking and testing requirements for the cargo tank discharge system, including delivery hose assemblies; and (3) requirements for emergency discharge control equipment on certain cargo tank motor vehicles transporting liquefied compressed gases that must be installed and certified by a Registered Inspector. (See sections 180.416(b)(d)(f); 180.405;180.407(h); 177.840(l); 173.315(n)).

*Affected Public:* Carriers in liquefied compressed gas service, manufacturers and repairers.

*Annual Reporting and Recordkeeping:*

Annual Respondents: 6,958.

Annual Responses: 920,530.

Annual Burden Hours: 200,615.

Frequency of collection: On

occasion.

Issued in Washington, DC, on June 1, 2001.

**Edward T. Mazzullo,**

*Director, Office of Hazardous Materials Standards.*

[FR Doc. 01-14316 Filed 6-6-01; 8:45 am]

**BILLING CODE 4910-60-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Finance Docket No. 34043]

#### Dakota Short Line Inc.—Lease Exemption—State of South Dakota

Dakota Short Line Inc. (DAKS), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to sublease from the Napa to Platte Regional Railroad Authority (NPRRA) and operate approximately 13.5 miles of rail line commencing at the intersection of the North Sioux City to Mitchell line located in the W<sup>1</sup>/<sub>2</sub> of the SW<sup>1</sup>/<sub>4</sub> of Section 22, Township 94 North, Range 68 West of the 5th P.M., also known as milepost 0.0, and additionally known as Railroad Engineer's Survey Station Number 0.0, and extending in a westerly direction, through the Counties of Yankton and Bon Homme, SD, and terminating at the westerly line of Section 16, Township 94 North, Range 58 west of the 5th P.M., also known as milepost 13.4±, and additionally known as Railroad Engineer's Survey Station Number 711+40.<sup>1</sup> DAKS certifies that its

<sup>1</sup> The line is owned by the State of South Dakota, and currently leased by NPRRA. See *Dakota*

projected revenues as a result of the transaction will not result in its becoming a Class II and Class I rail carrier.

DAKS states in its notice that Dakota Southern Railway Company was the last operator of the rail line and that there have been no rail movements over the rail line in the year 2001.

The transaction was due to be consummated on or after May 21, 2001.<sup>2</sup>

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34043, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423-0001. In addition, one copy of each pleading must be served on Leon E. Steege, 205 East 3rd St., P.O. Box 46, Delmont, SD 57330-0046.

Board decisions and notices are available on our website at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: May 31, 2001.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

Secretary.

[FR Doc. 01-14272 Filed 6-6-01; 8:45 am]

**BILLING CODE 4915-00-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 30, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

*Southern Railway Company Modified Rail Certificate*, Finance Docket No. 30734 (ICC served Oct. 31, 1985).

<sup>2</sup>DAKS reported that the transaction was consummated May 1, 2001. DAKS' representative has been notified by Board staff that the earliest the transaction could be consummated was May 21, 2001, the effective date of the exemption (7 days after the exemption was filed).

Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 9, 2001 to be assured of consideration.

### Internal Revenue Service (IRS)

*OMB Number:* 1545-1354.

*Form Number:* IRS Form 8833.

*Type of Review:* Extension.

*Title:* Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).

*Description:* Form 8833 is used by taxpayers that are required by section 6114 to disclose a treaty-based return position to disclose that position. The form may also be used to make the treaty-based position disclosure required by regulations section 301.7701(b)-7(b) for "dual resident" taxpayers.

*Respondents:* Individuals or households, Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 6,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—3 hr., 6 min.

Learning about the law or the form—1 hr., 35 min.

Preparing and sending the form to the IRS—1 hr., 42 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 38,460 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 01-14304 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 31, 2001.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before July 9, 2001.

### Internal Revenue Service (IRS)

*OMB Number:* 1545-0786.

*Regulation Project Number:* INTL-50-86 Final (TD 8110).

*Type of Review:* Extension.

*Title:* Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form.

*Description:* The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations. The people reporting will be institutions holding bearer obligations.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 1,000.

*Estimated Burden Hours Per*

*Respondent:* 3 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 39,742 hours.

*OMB Number:* 1545-0823.

*Regulation Project Number:* FI-221-83 NPRM and FI-100-83 Temporary.

*Type of Review:* Extension.

*Title:* Indian Tribal Governments Treated as States for Certain Purposes. *Description:* The regulations provide that if the governing body of a tribe, or its subdivision, is not designated as an Indian tribal government or subdivision thereof for purpose of section 7701(a)(40) and 7871, it may apply for a ruling from the IRS.

*Respondents:* State, Local or Tribal Government.

*Estimated Number of Respondents:* 25.

*Estimated Burden Hours Per*

*Respondent:* 1 hour.

*Frequency of Response:* Other (once).

*Estimated Total Reporting Burden:* 25 hours.

*OMB Number:* 1545-1081.

*Form Number:* IRS Form 8809.

*Type of Review:* Extension.

*Title:* Request for Extension of Time To File Information Returns.

*Description:* Form 8809 is used to request an extension of time to file certain information returns. It is used by IRS to process requests expeditiously and to track from year to year those who repeatedly ask for an extension.

*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents/Recordkeepers:* 50,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—2 hrs., 3 min.

Learning about the law or the form—9 min.

Preparing and sending the form to the IRS—26 min.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/Recordkeeping Burden:* 132,500 hours.

*OMB Number:* 1545-1132.

*Regulation Project Number:* INTL-536-89 Final.

*Type of Review:* Extension.

*Title:* Registration Requirements with Respect to Certain Debt Obligations; Application of Repeal of 30 Percent Withholding by the Tax Reform Act of 1984.

*Description:* The Internal Revenue Service needs the information in order to ensure that purchasers of bearer obligations are not U.S. persons (other than those permitted to hold obligations under section 165(j) and to ensure that U.S. persons holding bearer obligations properly report income and gain on such obligations.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 5,000.

*Estimated Burden Hours Per*

*Respondent/Recordkeeper:* 10 minutes.

*Frequency of Response:* On occasion, Annually.

*Estimated Total Reporting/Recordkeeping Burden:* 852 hours.

*OMB Number:* 1545-1728.

*Regulation Project Number:* REG-114082-00 NPRM and REG-109707-97 Temp and Final.

*Type of Review:* Extension.

*Title:* HIPAA Nondiscrimination (REG-114082-00); and Interim Final Rules for Nondiscrimination in Health Coverage in the Group Market (REG-109707-97).

*Description:* This regulation requires group health plans, and the employers and employee organizations that sponsor them, to provide a notice to individuals previously discriminated against based on a health factor, informing the individuals of their right to enroll in the plan without regard to their health. The notice is necessary so that these individuals will now that they have the right to enroll in the plan.

*Respondents:* Business or other for-profit, Not-for-profit institutions.

*Estimated Number of Respondents:* 120,000.

*Estimated Burden Hours Per*

*Respondent:* 3 minutes.

*Frequency of Response:* Other (one time by July 2001).

*Estimated Total Reporting/Recordkeeping Burden:* 5,950 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224

*OMB Reviewer:* Alexander T. Hunt, (202) 395-7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 01-14305 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 1040NR-EZ

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040NR-EZ, U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

#### SUPPLEMENTARY INFORMATION:

*Title:* U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.

*OMB Number:* 1545-1468.

*Form Number:* 1040NR-EZ.

*Abstract:* This form is used by certain nonresident aliens with simple tax situations and with no dependents to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, etc., are correctly figured.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Respondent:* 4 hours, 31 minutes.

*Estimated Total Annual Burden Hours:* 452,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 30, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14390 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Form 720**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 720, Quarterly Federal Excise Tax Return.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Quarterly Federal Excise Tax Return.

*OMB Number:* 1545-0023.

*Form Number:* 720.

*Abstract:* Form 720 is used to report (1) excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, (2) the tax on facilities and services, (3) environmental taxes, (4) luxury tax, and (5) floor stocks taxes. The information supplied on Form 720 is used by the IRS to determine the correct tax liability. Additionally, the data is reported by the IRS to Treasury so that funds may be transferred from the general revenue fund to the appropriate trust funds.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 69 hours, 35 minutes.

*Estimated Total Annual Burden Hours:* 3,479,551.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 30, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14391 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****Proposed Collection; Comment Request for Forms W-8BEN, W-8ECI, W-8EXP, and W-8IMY**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed

and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States, Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, and Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form W-8BEN, Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding, Form W-8ECI, Certificate of Foreign Person's Claim for Exemption From Withholding on Income Effectively Connected With the Conduct of a Trade or Business in the United States, Form W-8EXP, Certificate of Foreign Government or Other Foreign Organization for United States Tax Withholding, and Form W-8IMY, Certificate of Foreign Intermediary, Foreign Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding.

*OMB Number:* 1545-1621.

*Form Numbers:* W-8BEN, W-8ECI, W-8EXP, and W-8IMY.

*Abstract:* Form W-8BEN is used for certain types of income to establish that the person is a foreign person, is the beneficial owner of the income for which Form W-8BEN is being provided and, if applicable, to claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty. Form W-8ECI is used to establish that the person is a foreign person, is the beneficial owner of the income for which Form W-8ECI is being provided, and to claim that the income

is effectively connected with the conduct of a trade or business within the United States. Form W-8EXP is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation. The form is used by such persons to establish foreign status, to claim that the person is the beneficial owner of the income for which Form W-8EXP is given and, if applicable, to claim a reduced rate of, or exemption from, withholding. Form W-8IMY is provided to a withholding agent or payer by a foreign intermediary, foreign partnership, and certain U.S. branches to make representations regarding the status of beneficial owners or to transmit appropriate documentation to the withholding agent.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* Form W-8BEN—3,000,000; Form W-8ECI—180,000; Form W-8EXP—240; Form W-8IMY—400.

*Estimated Time Per Respondent:* Form W-8BEN—13 hr., 47 min.; Form W-8ECI—10 hr., 33 min.; Form W-8EXP—18 hr. 28 min.; Form W-8IMY—16 hr., 46 min.

*Estimated Total Annual Burden Hours:* Form W-8BEN—41,370,000; Form W-8ECI—1,899,000; Form W-8EXP—4,431; Form W-8IMY—6,704.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of

information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 29, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14392 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 709

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* United States Gift (and Generation-Skipping Transfer) Tax Return.

*OMB Number:* 1545-0020.

*Form Number:* 709.

*Abstract:* Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. The

IRS uses the information to collect and enforce these taxes, to verify that the taxes are properly computed, and to compute the tax base for the estate tax.

*Current Actions:* On Form 709, in the "Sign Here" area at the bottom of the page, a new checkbox is added for paid preparer authorization.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 130,000.

*Estimated Time Per Respondent:* 4 hours, 43 minutes.

*Estimated Total Annual Burden Hours:* 613,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 29, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14393 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****[PS-19-92]****Proposed Collection; Comment Request for Regulation Project****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS-19-92 (TD 8520), Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit (§§ 1.42-6, 1.42-8, and 1.42-10).

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulation should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Carryover Allocations and Other Rules Relating to the Low-Income Housing Credit.

*OMB Number:* 1545-1102.

*Regulation Project Number:* PS-19-92.

*Abstract:* Section 42 of the Internal Revenue Code provides for a low-income housing tax credit. The regulations provide guidance with respect to eligibility for a carryover allocation, procedures for electing an appropriate percentage month, the general public use requirement, the utility allowance to be used in determining gross rent, and the inclusion of the cost of certain services in gross rent. This information will assist State and local housing credit agencies and taxpayers that apply for or claim the low-income housing tax credit in complying with the requirements of Code section 42.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

*Estimated Number of Respondents/Recordkeepers:* 2,230.

*Estimated Time Per Respondent/Recordkeeper:* 1 hr., 48 min.

*Estimated Total Annual Reporting/Recordkeeping Burden Hours:* 4,008.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14394 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****[EE-113-90]****Proposed Collection; Comment Request for Regulation Project****AGENCY:** Internal Revenue Service (IRS), Treasury.**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final and temporary regulations, EE-113-90 (TD 8324), Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances (§ 1.62-2).

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the regulations should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Employee Business Expenses-Reporting and Withholding on Employee Business Expense Reimbursements and Allowances.

*OMB Number:* 1545-1148.

*Regulation Project Number:* EE-113-90.

*Abstract:* These temporary and final regulations provide rules concerning the taxation of, and reporting and withholding on, payments with respect to employee business expenses under a reimbursement or other expense allowance arrangement. The regulations affect employees who receive payments and payors who make payments under such arrangements.

*Current Actions:* There is no change to these existing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households, business or other for-profit

organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

*Estimated Number of Recordkeepers:* 1,419,456.

*Estimated Time Per Recordkeeper:* 30 minutes.

*Estimated Total Annual Recordkeeping Hours:* 709,728.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 25, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14395 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 8453-OL

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8453-OL, U.S. Individual Income Tax Declaration for an IRS e-file On-Line Return.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Individual Income Tax Declaration for an IRS e-file On-Line Return.

*OMB Number:* 1545-1397.

*Form Number:* Form 8453-OL.

*Abstract:* Form 8453-OL is used in conjunction with the On-Line Electronic Filing Program. The data on the form is used to verify the electronic portion of the tax return, allow for direct deposit of any refund, provide consent for the IRS to disclose the status of the return to the on-line service provider and/or transmitter, and obtain the required signatures. Form 8453-OL, together with the electronic transmission, comprises the taxpayer's tax return.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 50,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 12,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2001

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14396 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Proposed Collection; Comment Request for Form 6627

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6627, Environmental Taxes.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the form and instructions should be directed to Larnice Mack, (202) 622-3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Environmental Taxes.

*OMB Number:* 1545-0245.

*Form Number:* Form 6627.

*Abstract:* Internal Revenue Code sections 4681 and 4682 impose a tax on ozone-depleting chemicals (ODCs) and on imported products containing ODCs. Form 6627 is used to compute the environmental tax on ODCs and on imported products that use ODCs as materials in the manufacture or production of the product. It is also used to compute the floor stocks tax on ODCs.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 2,894.

*Estimated Time Per Respondent:* 1 Hour, 47 minutes.

*Estimated Total Annual Burden Hours:* 5,172.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14397 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-U**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 8863**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8863, Education Credits (Hope and Lifetime Learning Credits).

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Education Credits (Hope and Lifetime Learning Credits).

*OMB Number:* 1545-1618.

*Form Number:* 8863.

*Abstract:* Section 25A of the Internal Revenue Code allows for two education credits, the Hope credit and the lifetime learning credit. Form 8863 will be used to compute the amount of the allowable credits. The IRS will use the information on the form to verify that respondents correctly computed their education credits.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 12,000,000.

*Estimated Time Per Respondent:* 1 hr., 6 min.

*Estimated Total Annual Burden Hours:* 13,210,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 1, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14398 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Proposed Collection; Comment Request for Form 1098**

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1098, Mortgage Interest Statement.

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622-6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Mortgage Interest Statement.

*OMB Number:* 1545-0901.

*Form Number:* 1098.

*Abstract:* Section 6050H of the Internal Revenue Code requires mortgagors to report mortgage interest, including points, of \$600 or more paid to them during the year by an individual. The form will be used by the IRS to verify that taxpayers have deducted the proper amount of mortgage interest expense or have included the proper amount of mortgage interest refunds in income on their tax returns.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 66,989,155.

*Estimated Time Per Respondent:* 7 minutes.

*Estimated Total Annual Burden Hours:* 8,038,699.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14399 Filed 6-6-01; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[REG-208985-89]

#### Proposed Collection; Comment Request for Regulation Project

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG-208985-89, Taxable Year of Certain Foreign Corporations Beginning After July 10, 1989 (§§ 1.563-3, 1.898-3 and 1.898-4).

**DATES:** Written comments should be received on or before August 6, 2001, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:**

Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Taxable Year of Certain Foreign Corporations Beginning After July 10, 1989.

*OMB Number:* 1545-1355.

*Regulation Project Number:* REG-208985-89 (formerly INTL-848-89).

*Abstract:* This regulation provides guidance concerning Internal Revenue Code section 898, which seeks to eliminate the deferral of income and, therefore, the understatement in income, by United States shareholders of certain controlled foreign corporations and foreign personal holding companies. The elimination of deferral is accomplished by requiring a specified foreign corporation to conform its taxable year to the majority U.S. shareholder year. The information collected will be used by the IRS to assess the reported tax and determine whether taxpayers have complied with Code section 898.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 700.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14400 Filed 6-6-01; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

[INTL-941-86; INTL-656-87; INTL-704-87]

#### Proposed Collection; Comment Request for Regulation Project

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL-941-86; INTL-656-87; and INTL-704-87, Treatment of Shareholders of Certain Passive Foreign Investment

Companies (§ 1.1291-1, 1.1291-2, 1.1291-3, 1.1291-6, and 1.1291-8).

**DATES:** Written comments should be received on or before August 6, 2001 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treatment of Shareholders of Certain Passive Foreign Investment Companies.

*OMB Number:* 1545-1304.

*Regulation Project Number:* INTL-941-86; INTL-656-87; and INTL-704-87.

*Abstract:* This regulation concerns the taxation of shareholders of certain passive foreign investment companies (PFICs) upon payment of distributions by such companies or upon disposition of the stock of such companies. The reporting requirements affect U.S. persons that are direct and indirect shareholders of PFICs. The information is required by the IRS to identify PFICs and their shareholders, administer shareholder elections, verify amounts reported, and track transfers of stock of certain PFICs.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals and business or other for-profit organizations.

*Estimated Number of Respondents:* 2,500.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

#### Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 31, 2001.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 01-14401 Filed 6-6-01; 8:45 am]

BILLING CODE 4830-01-P



# Federal Register

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**Thursday,  
June 7, 2001**

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## **Part II**

## **The President**

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**Memorandum of June 5, 2001—  
Determination Under the Interstate  
Commerce Commission Termination Act  
of 1995**



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# Presidential Documents

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Title 3—

Memorandum of June 5, 2001

The President

## Determination Under the Interstate Commerce Commission Termination Act of 1995

### Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by, persons of a contiguous foreign country, and authorized the President to modify the moratorium. The Interstate Commerce Commission Termination Act of 1995 (ICCTA) maintained these restrictions, subject to modifications made prior to the enactment of the ICCTA, and authorized the President to make further modifications to the moratorium. The relevant provisions of the ICCTA are codified at 49 U.S.C. 13902.

The North American Free Trade Agreement (NAFTA) established a schedule for liberalizing certain restrictions on investment in truck and bus services. Pursuant to 49 U.S.C. 13902(c)(3), I have determined that the following modifications to the moratorium are consistent with obligations of the United States under NAFTA and with U.S. transportation policy, and that the moratorium shall be modified accordingly. First, enterprises domiciled in the United States that are owned or controlled by persons of Mexico will be allowed to obtain operating authority to provide truck services for the transportation of international cargo between points in the United States. Second, enterprises domiciled in the United States that are owned or controlled by persons of Mexico will be allowed to obtain operating authority to provide bus services between points in the United States. These modifications shall be effective today.

Pursuant to 49 U.S.C. 13902(c)(5), I have determined that expeditious action is required to implement these modifications to the moratorium. Effective today, the Department of Transportation will accept and expeditiously process applications, submitted by enterprises domiciled in the United States that are owned or controlled by persons of Mexico, to obtain operating authority to provide truck services for the transportation of international cargo between points in the United States or to provide bus services between points in the United States.

Motor carriers domiciled in the United States that are owned or controlled by persons of Mexico will be subject to the same Federal and State regulations and procedures that apply to all other U.S. carriers. These include safety regulations, such as drug and alcohol testing; insurance requirements; taxes and fees; and all other applicable laws and regulations, including those administered by the U.S. Customs Service, the Immigration and Naturalization Service, and the Department of Labor.

This memorandum shall be published in the **Federal Register**.

A handwritten signature in black ink, appearing to read "George W. Bush". The signature is written in a cursive style with a large, prominent "G" and "B".

THE WHITE HOUSE,  
*Washington, June 5, 2001.*

[FR Doc. 01-14596

Filed 6-6-01; 12:27 pm]

Billing code 4910-62-M

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#### H.R. 581/P.L. 107-13

To authorize the Secretary of the Interior and the Secretary of Agriculture to use funds

appropriated for wildland fire management in the Department of the Interior and Related Agencies Appropriations Act, 2001, to reimburse the United States Fish and Wildlife Service and the National Marine Fisheries Service to facilitate the interagency cooperation required under the Endangered Species Act of 1973 in connection with wildland fire management. (June 3, 2001; 115 Stat. 24)

**Last List June 1, 2001**

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